

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. ShriManoj Kumar Choubey
Joint Commissioner
Office of the Commissioner of Commercial Tax, Indore Division-1

2. ShriVirendra Kumar Jain
Joint Commissioner
Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23ANGPM3465LIZ5
Name and address of the applicant	M/S Mohammad Arif Mohammad Latif Near Murga Bidi, Lajpatpur Ward, Sagar, Madhya Pradesh – 470002
Point on which advance ruling sought	whether any particular thing done by the applicant with respect to any goods or services or both mounts to or results in a supply of goods or services or both, within the meaning of that term;
Present on behalf of applicant	CA Sandeep Mukherjee
Case Number	.../3.../2020
Order dated	17/06/2021
Order Number	03/2021

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and



MPSGT Act respectively) by Mohammad Arif(hereinafter also referred to as applicant),registered under the Goods & Services Tax.

2. The provisions of the CGST Act and MPGST 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 MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

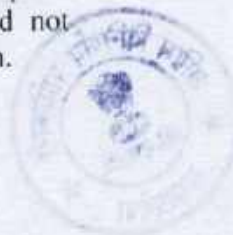
3. BRIEF FACTS OF THE CASE –

The Applicant in his argument gave following brief facts of the case.

- 3.1 The applicant is engaged, inter alia, in purchase of Tendupatta from the MP State Minor Forest Produce (Trading and Development) Cooperative Federation Limited (hereinafter referred to as the Federation for the sake of brevity)for the purpose of trading of Tendupatta.
- 3.2 The sale of Tendupatta, was made to successful bidder of Tender floated by the Federation and the transaction of the sale of Tendupatta was governed by the agreement that the successful bidder entered into with the Federation. The text of the agreement formed the part of the Tender.
- 3.3 TheTendupatta to be procured was to be verified by the successful bidder to establish its quality and usefulness for the purpose for which it was to be procured. Once the quality was accepted, the bidder would make the payment for the Tendupatta as per the instalments stipulated in the agreement and take delivery of the Tendupatta. In case the bidder was not able to make the payment, the Tendupatta was to be stored in the Godown of the Federation till such time as the payment for the Tendupatta was not made in full. The tendupatta so stored in the Godown of the Federation was under the joint lock of the Federation and the successful bidder.
- 3.4 The successful bidder, under the terms of contract was required to pay for the lots of Tendupatta in instalments and obtain the Tendupatta from the Federation to complete the sale. Since the Tendupatta, till the time the payment was made by the bidder, was to be kept in the godown of the Federation, the Tendupatta was insured by the Federation. The insurance was obtained by the Federation at the cost of the successful bidder in the joint name of the Federation and the successful bidder.
- 3.5 The applicant was the successful bidder in NIT No. ते.प. रदिनांक01.11.2016 and accordingly entered into an agreement for sale of Tendupatta with the Federation and the paid the first two instalments out of the four instalments which were to be paid under the terms of the agreement. The Federation had duly issued the invoice for the Tendupatta covered under the first two instalments and delivered the Tendupatta to the applicant.
- 3.6 Unfortunately, due to a fire in the Godown of the Federation, the Tendupatta stored, relating to the subsequent installments, was destroyed and could not ultimately be delivered to the applicant (Successful bidder) by the Federation.



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- 3.7 The Federation had obtained insurance of the Tendupatta at the cost of the applicant (Successful bidder), wherein the Federation was the joint beneficiary of the insurance. Upon the fire, the claim for insurance was filed and the insurance proceeds were received by the federation.
- 3.8 Thereafter, the Federation directed the applicant (Successful bidder) to pay for the subsequent installments for the Tendupatta that was destroyed in the fire, after appropriating the Security Deposit and adjusting the claim received from the insurance company. While computing the amount to be paid by the applicant (Successful bidder), the Federation added GST, treating the goods destroyed in the fire to have been supplied in terms of the GST Act, 2017.

4. QUESTION RAISED BEFORE THE AUTHORITY -

- 4.1. Whether under the circumstances of the case, mere acceptance joint custody of the goods without the rights and privileges of ownership of the goods amounts to "Supply" within the meaning of Section 7 of the GST Act?
- 4.2. Whether under the circumstances of the case, where the goods are destroyed by fire before being delivered under an agreement to sell, can there be "Supply" within the meaning of Section 7 of the GST Act after the destruction of the goods by fire?

5. DEPARTMENT VIEW POINT -

The Asstt Commissioner, State Tax, Sagar vide his letter No.Vak/ARA/2021/85 dated 06.02.2021 informed that on the following reasons, the issued covered in the application should not be considered as supply under Section 7(1) :-

- (i) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Although this definition is inclusive but for supply the condition, is in the course of furtherance of business in addition to made or agreed to be made and for a consideration is essential. In the said issue, the condition of consideration is not fulfilled as in the definition of consideration, the deposit is excluded.

- (ii) In this case, the title of goods not transferred, hence the goods not to be considered as supply.
- (iii) As per the provision of Section 31 :-
A registered person supplying taxable goods shall before or at the time of -
(a) Removal of goods for supply to the recipient, where the supply involves movement of the goods or
(b) Delivery of goods or making available thereof to the recipient in any other case.

Issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

In the above case, neither the removal of goods nor issue of tax invoice, hence not qualify as supply.



6. RECORD OF PERSONAL HEARING -

6.1. Counsel for the Applicant appeared personal hearing on 05.09.2020 and then on 18.09.2020 and 01.10.2020 through electronic mode and inform that no invoice has been issued of goods destroyed in joint custody. He made the following submission on 05.09.2020 in support of his contention.

“

16.1. *The provisions relating to levy are given in Section 9 of the GST Act. The text of the provision is as under:*

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(emphasis supplied)

The taxable event for levy of GST is thus "supply". The moment there is supply, the liability to GST arises, even though the payment of GST may have happened prior to the supply or is to happen at a later date as per the machinery provisions. Therefore, it is important to ascertain, in all cases, that supply within the meaning of the GST Act has taken place.

16.2. *The provisions relating to "Supply" are contained in Section 7 of the GST Act, 2017, which states as under:*

7. (1) For the purposes of this Act, the expression "supply" includes-

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- (b) import of services for a consideration whether or not in the course or furtherance of business;*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

Of the four limbs to Section 7(1), the limbs, (b), (c) and (d) do not apply to the transaction at hand. Also, out of the forms of supply given in sub-



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clause (a), except for the term "sale", none of the types of supplies are applicable in this case. If the transaction at hand can be classified as "sale" then there shall be supply within the meaning of the GST Act, else the transaction cannot be classified as "Supply". Therefore, in the given facts of the case where the goods stand destroyed, it has to be seen whether sale has happened or not.

16.3. A joint reading of the two sections, viz 7(1)(a) and 9(1) would show that for the liability to pay GST to arise, there has to be supply of goods or services. Unless there is supply, there cannot be a taxable transaction. In the instant case, the item involved is "goods". Therefore, for liability pay GST to arise, goods i.e. Tendupatta has to be shown to have been supplied. The type of supply in this case is sale and therefore, it has to be established that "sale" has taken place.

16.4. The term sale is defined under the Sale of Goods Act, 1930 and Sale, as well as Agreement to Sell are defined in Section 4 of the Act. The text of the Section is reproduced hereunder for ready reference :

4. Sale and agreement to sell.—(1) A contract of sale of goods is a contract whereby the Federation transfers or agrees to transfer the property in goods to the bidder for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the Federation to the bidder, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

16.5. According to this section, where the transfer of the property in the goods is to take place in the future time or subject to some condition thereafter to be fulfilled, the contract is an agreement to sell. In the case of the purchase of Tendupatta, the goods in question (that is, Tendupatta fit for use for making bidi) were not in existence at the point of time when the Federation and the applicant (Successful bidder) entered into the contract for the purchase of Tendupatta. The sale of tendupatta was subject to the acceptance of the tendupatta for its quality. Also, the sale was to be made at a future point of time and accepted for its quality. This



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fact is duly narrated in the Agreement at para 5(IV), the relevant text of which is as under:

"5(IV) संग्रहण के उपरांत क्रेता के प्रतिनिधि को समस्त संग्रहित तेंदू पत्ता संग्रहण के 48 घंटे के भीतर हरी अवस्था में परिदान दिया जायेगा।....."

16.6. Therefore, the contract entered into by the Federation with the applicant (Successful bidder) for sale of Tendupatta at a future time, with conditions regarding acceptance of quality and payment before delivery makes the agreement that of "an agreement to sell".

16.7. From the perusal of the above clause of the agreement it is clear that at the time of the contract, the goods were not in existence. Therefore, the goods in question were Future Goods, the sale of which is provided for in Section 6 of the Sale of Goods Act, 1930. The text of the provision is as under:

6. Existing or future goods.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the Federation, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the Federation depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the Federation purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Thus, by virtue of Section 6 also, since the contract in present for sale of future goods has been entered into, the contract would be an agreement to sell the goods.

16.8. Under clause 6(ब) of the agreement, it is stated that if delivery is not taken from the society, the facility of delivery from the godown shall be provided to the applicant (successful bidder). Further it is also stated that in case of facility of delivery from godown is granted, facility for safe storage of goods shall be provided by storing the Tendupatta in godown of Federation / Society / Department under joint lock. The relevant clause is as under:

"(ब) क्रेता को गोदाम से तेंदूपत्ता परिदान की सुविद्धल दिए जाने की स्थिति में उसे प्रबंध संचालक, जिला यूनियन द्वारा 29.04.2017 तक आदेशित संघ / समिति / विभागीय गोदाम में तथा ऐसा गोदाम उपलब्ध न कराये जाने की स्थिति में प्रबंध संचालक जिला यूनियन अथवा उनके द्वारा इस हेतु प्राधिकृत अधिकारी द्वारा इस उद्देश्य के लिए अनुमोदित अपने गोदाम में, दोहरे ताले में निम्न शर्तों पर निरापद रखने की सुविधा दी जा सकेगी।....."



It is therefore clear that the delivery of the goods was to be given from the godown and till such time as the delivery was not given, it was to be kept in safe storage under joint lock in the Federation's godown.

- 16.9. *The delivery of the goods in question was conditional on the payment of the due installment. Also, in case of delay in payment of the installment, the installment was to be paid along with the interest for the period of delay in the payment of the installment. The relevant terms of the contract in this regard are as under:*

"6(ब)(1).....

क्रेता द्वारा किसी किश्त की देय तिथि के पूर्व उस किश्त की नीचे दर्शाये अनुसार आंशिक राशि एवम उस पर देय समस्त कर आदि जमाकर जमा की गई राशि के अनुपात में पत्ते का परिदान प्राप्त किया जा सकेगा।"

"6(स)(1) क्रेता तेंदुपत्ते का कंडिका क्रमांक 6(B) के अनुसार आदेशित/ अनुमोदित गोदामों से परिदान लेगा तथा वह गोदम के अंदर से बोरा हटाने का समस्त व्यय स्वयं वहन करेगा। क्रेता को पत्तों का परिदान केवल तभी दिया जायेगा जब कि देय राशि के विलम्बित भुगतान की स्थिति में ब्याज सहित, पूर्ण भुगतान उसके द्वारा कर दिया गया है।"

It is clear from the above clauses of the agreement that the delivery of the goods was not made to be made to the applicant (Successful bidder) unless the whole of the amount was paid and in case of delay in payment, interest was paid along with the sum due. The storage of goods in the Joint Custody would not amount to delivery of goods to the applicant (Successful bidder). Since the installments due were not paid, there is no question of delivery of the goods to the applicant (Successful Bidder).

16.10.

It is further stated in the agreement that the applicant shall have the right to remove the Tendupatta only during the duration of the agreement. After the expiry of the agreement, the Tendupatta shall become the property of the Federation. In this regard, kindly see clause 6(ड) reproduced hereunder:

"(ड) क्रेता को उसके द्वारा क्रय किये गए तेंदुपत्ते को गोदामों से केवल करार की अवधि में ही हटाने का अधिकार है तथा करार अवधि समाप्त होने पर उसका तेंदुपत्तों की शेष मात्रा पर कोई अधिकार नहीं होगा तथा ऐसा तेंदुपत्ता संघ की संपत्ति बन गया माना जाएगा।.....

Therefore, even though the goods were stored in the Federation's godown under the joint custody of the Federation and the applicant, the goods were not delivered or sold to the applicant till such time as all the conditions of the agreement were not fulfilled by the applicant.



- 16.11. Regarding the point of time on which the property in goods passes to the bidder, it may be relevant to see the provisions of Section 23 of the Sale of Goods Act, 1930. As per the provision of the Act, the property in goods, in case of future goods, passes to the bidder when they are unconditionally appropriated to the contract.

Since the future goods are not appropriated to the contract unless the due amount is paid in full, the property in the goods does not pass to the applicant (Successful bidder) as per the terms of the contract between the Federation and the applicant (Successful bidder). The text of the provision is as under:

23. Sale of unascertained goods and appropriation.—(1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the Federation with the assent of the bidder or by the bidder with the assent of the Federation, the property in the goods thereupon passes to the bidder. Such assent may be express or implied, and may be given either before or after the appropriation is made.

In the facts of the case, unless all the conditions of the agreement were complied with, the goods were not to be treated as delivered or sold. Therefore, property in the goods would only pass to the applicant after the compliance with all the conditions of the agreement.

- 16.12. The agreement has further stated that in case of non-compliance of the terms and conditions of the contract in toto, the Tendupatta shall be deemed not to have been delivered or sold. The relevant clause is as under:

“10. करारनामे का अनुपालन -

यदि पूर्वोक्त एवं निविदा सूचना में विनिर्दिष्ट परिदान तथा क्रय की शर्तों का पूर्णतःपालन / परिपालन नहीं किया जाता है, तो पत्तों को परिदत्त तथ क्रय किया नहीं समझा जाएगा।”

- 16.13.

The goods were insured by the Federation at the cost of the Bidder. The Federation was not the beneficiary of goods insured by the bidder. For obtaining insurance, the person entering into the contract with the Insurer should have insurable interest in the goods. Until and unless the risk is with the Federation, the Federation does not have insurable interest in the goods after sale. Therefore, in this case, since the Federation had obtained Insurance in its own name, by conduct, the Federation has shown that it had insurable interest in the goods. Therefore, it is clear that the risk in goods had not passed on to the



bidder. Further as per section 23 of the Sale of Goods Act, 1930, the risk in goods passes with the transfer of the property in goods. The text of the provision is as under:

26. Risk prima facie passes with property.—Unless otherwise agreed, the goods remain at the Federation's risk until the property therein is transferred to the bidder, but when the property therein is transferred to the bidder, the goods are at the bidder's risk whether delivery has been made or not:

16.14. A joint reading of the provisions of Section 23 and 26 of the Sale of Goods Act, 1932, shows that neither the risk in the goods nor the property in the goods had passed to the applicant (Successful Bidder). Also, the fact that the Federation had obtained the insurance with its name as the insurer, shows that it was accepted by the Federation that the risk had not passed to the applicant (Successful Bidder). In these facts of the case, it is established beyond any doubt that the goods were not delivered to the Applicant, the property in goods had not passed to the applicant and also the risk in the goods had not passed to the applicant.

16.15. Further, once the goods are ascertained and stored in the godown, in case of destruction of the goods, before sale and after agreement to sell, the agreement is avoided. The relevant section of the Sale of Goods Act, 1930 is reproduced hereunder:

8. Goods perishing before sale but after agreement to sell.—Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the Federation or bidder perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the bidder, the agreement is thereby avoided.

Thus, the transaction of the applicant, once the goods were destroyed in fire, was merely an "avoidable agreement to sell" and not sale.

16.16. Further under the terms of the contract, the Federation was to issue Certificate of Sale to the applicant (Successful bidder) in terms of the मध्यप्रदेश तेंदूपत्ता (ब्यापार विनयमन) नियमावली, 1966, which was not done, which further indicates the fact that it was accepted by the Federation that the sale was not made by the Federation. The relevant clause is as under:

9. विक्रय प्रमाण पत्र जारी करना
संघ या उसके द्वारा प्राधिकृत अधिकारी या वन मंडलाधिकारी क्रेता को तेंदूपत्तों के परिदान के पश्चात मध्यप्रदेश तेंदूपत्ता (ब्यापार



विनयमन) नियमावली, 1966 के अंतर्गत प्रावधानित प्रारूप "ड" में उसका विक्रय प्रमाण पत्र प्रदान करेगा।"

16.17.

The provisions of Time of Supply of goods is given in Section 12 of the GST Act, 2017, which states that the liability to pay GST shall arise at the time of supply, determined as per the provisions of Section 12. Further, sub-section (2) specifies the time of supply in the case of goods. The text of the provision is as under:

(2) The time of supply of goods shall be the earlier of the following dates, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

In the instant case, invoice has not been raised by the Federation and also payment has not been made by the Applicant. Therefore, assuming but not accepting that there is supply, the time of supply had not come before the destruction of the goods by fire. Therefore, till the time of the fire, there was no liability to pay GST.

16.18.

Once the subject matter of the sale is destroyed and invoice cannot be raised for non-existent goods. Again, the invoice has to accompany the goods and since the goods are not in existence, invoice thereof cannot be raised. In this regard, kindly see the provisions of Section 31 of the GST Act, 2017, the relevant text whereof is reproduced hereunder for ready reference:

31. (1) A registered person supplying taxable goods shall, before or at the time of,—

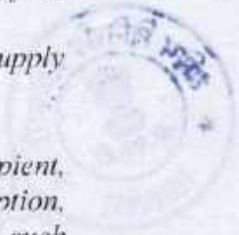
(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

16.19.

The summary of the terms of the agreement and their implications, has been tabulated as under:

S.No.	Term of the agreement	Implication
1.	"5(IV) संग्रहण के उपरांत क्रेता के प्रतिनिधि को समस्त संग्रहित तैदू पत्ता संग्रहण के 48 घंटे के भीतर	At the time of the agreement the goods were not identified



	हरी अवस्था में परिदान दिया जायेगा।.....”	and therefore, the case is that of sale of future goods.
2.	“6(ब) क्रेता को गोदाम से तेंदुपत्ता परिदान की सुविद्दहल दिए जाने की स्थिति में उसे प्रबंध संचालक, जिला यूनियन द्वारा 29.04.2017 तक आदेशित संघ / समिति / विभागीय गोदाम में तथा ऐसा गोदाम उपलब्ध न कराये जाने की स्थिति में प्रबंध संचालक जिला यूनियन अथवा उनके द्वारा इस हेतु प्राधिकृत अधिकारी द्वारा इस उद्देश्य के लिए अनुमोदित अपने गोदाम में, दोहरे ताले में निम्न शर्तों पर निरापद रखने की सुविधा दी जा सकेगी।.....”	The goods were to be delivered from the godown and till delivery of the goods, they were to be kept under joint lock for their safety.
3.	“6(ब)(1)..... क्रेताद्वारा किसी किश्त की देय तिथि के पूर्व उस किश्त की नीचे दर्शाये अनुसार आंशिक राशि एवम उस पर देय समस्त कर आदि जमाकर जमा की गई राशि के अनुपात में पत्ते का परिदान प्राप्त किया जा सकेगा।” “6(स)(1) क्रेता तेंदुपत्ते का कंडिका क्रमांक 6(B) के अनुसार आदेशित/ अनुमोदित गोदामों से परिदान लेगा तथा वह गोदाम के अंदर से बोरा हटाने का समस्त व्यय स्वयं वहन करेगा। क्रेता को पत्तों का परिदान केवल तभी दिया जायेगा जब कि देय राशि के विलम्बित भुगतान की स्थिति में ब्याज सहित पूर्ण भुगतान उसके द्वारा कर दिया गया है।”	The delivery of the goods was not made to be made to the applicant (Successful bidder) unless the whole of the amount was paid and in case of delay in payment, interest was paid along with the sum due.
4.	“(इ) क्रेता को उसके द्वारा क्रय किये गए तेंदुपत्ते को गोदामों से केवल करार की अवधि में ही हटाने का अधिकार है तथ करार अवधि	The goods were not delivered or sold to the applicant till such time as all the



	समाप्त होने पर उसका तेंदुपत्तों की शेष मात्र पर कोई अधिकार नहीं होगा तथा ऐसा तेंदुपत्ता संघ की संपत्ति बन गया माना जाएगा।.....	conditions of the agreement were not fulfilled by the applicant.
5.	"10. करारनामे का अनुपालन - यदि पूर्वोक्त एवं निविदा सूचना में विनिर्दिष्ट परिदान तथा क्रय की शर्तों का पूर्णतःपालन / परिपालन नहीं किया जाता है, तो पत्तों को परिदत्त तथा क्रय किया नहीं समझा जाएगा।"	In case of non-compliance of the terms and conditions of the contract in toto, the Tendupatta shall be deemed not to have been delivered or sold.
6.	"9. विक्रय प्रमाण पत्र जारी करना संघ या उसके द्वारा प्राधिकृत अधिकारी या वन मंडलाधिकारी क्रेता को तेंदुपत्तों के परिदान के पश्चात मध्यप्रदेश तेंदुपत्ता (व्यापार विनयमन) नियमावली, 1966 के अंतर्गत प्रावधानित प्रारूप "ठ" में उसका विक्रय प्रमाण पत्र प्रदान करेगा।"	Sale letter / certificate is to be issued for goods sold.

16.20.

It is therefore clear that:

- accepting joint custody of the goods without the rights and privileges of ownership does not constitute completion of sale in the eyes of law, further such custody was not interpreted as delivery or sale of Tendupatta to the applicant;
- the agreement of the Federation with the applicant was an agreement to sell;
- sale had not been made before the fire destroyed the goods since there was no delivery or payment of consideration which are the most important events for sale to occasion under the terms of the agreement;
- delivery of the goods had not been made before the destruction of the goods since the delivery could only have been made after the full payment of the goods being delivered along with the interest due for the period of delay in making the full payment;
- the property in goods and the risk were both with the Federation and had not passed to the applicant before the destruction of the goods since the Federation obtained insurance as a person with insurable interest in the property;



- f) the destruction of the goods resulted in the agreement to sell becoming an avoidable contract; and
- g) in absence of the sale of the goods, there was no supply of Tendupatta giving rise to a liability to pay GST.

16.21. Based on our submissions, it is clear that the Honorable Advance Ruling Authority may be pleased to hold –

- a) Acceptance of joint custody of goods by the applicant does not amount to supply of goods (Tendupatta); and
- b) In case of an agreement to sell, if the subject matter of sale is destroyed before delivery of the goods, subsequent actions cannot result in supply of the goods within the meaning of the term "Supply" under the GST Act."

6.2. He submitted the following documents that they may be taken on record:

- a) Letter from Managing Director, District Forest Produce Co-operative Union, West Mandla to the applicant demanding GST on the Tendupatta destroyed by fire;
- b) Letter from Managing Director, District Forest Produce Co-operative Union, West Mandla to the Additional Managing Director (Insurance) MP Minor Forest Produce (Trading and Development) Cooperative Federation, Bhopal;
- c) Agreement of the applicant with MP Minor Forest Produce (Trading and Development) Cooperative Federation, Bhopal for procurement of Tendupatta;
- d) Copy of Invoice for sale of Tendupatta by MP Minor Forest Produce (Trading and Development) Cooperative Federation, Bhopal;
- e) Copy of Delivery letter of Tendupatta and Transport Permit; and
- f) Copy of Insurance Policy for Tendupatta.

6.3. During the course of the Personal Hearing on 01.10.2020, the counsel made the following submission on email :

1. APPLICANT'S ELIGIBILITY TO FILE PRESENT ADVANCE RULING APPLICATION.

1.1. Sub-section (c) of Section 95 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), defines the term 'applicant' as under: -

"applicant" means any person registered or desirous of obtaining registration under this Act"
... Emphasis Supplied

1.2. A perusal of the above clarifies that the scope of the term 'applicant', as defined under sub-section (c) of Section 95 of the CGST Act shall include both, the person registered under the CGST Act and also the person who is not registered as on the date of applying for the advance ruling, but is desirous of



seeking registration under the CGST Act, in the state where advance ruling is sought.

- 1.3. Further, Section 22 of the CGST Act, specifies the person liable for registration and reads as under:-
"22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:"
... (Emphasis Supplied)
- 1.4. The above referred section can be vivisected into following essentials: -
 a. A supplier shall be liable to be registered under CGST Act in the State or Union Territory, from where he makes taxable supply of goods or services or both;
 b. If the aggregate turnover in the financial year exceeds rupees twenty lakh.
- 1.5. The Applicant submits that as on date, it is registered in Madhya Pradesh and also willing to make taxable supplies of goods from the same to its customers. Further, the turnover of the Applicant exceeds rupees twenty lakhs in the financial year. Given this, it is submitted that Applicant clearly satisfies to be 'applicant' in terms of sub-section (c) of the Section 95 of the CGST Act.
- 1.6. Furthermore, the advance ruling can only be sought on the issues, as are specified under Section 97(2) of the CGST Act, which reads as under:-
" (2) The question on which the 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."
... Emphasis Supplied
- 1.7. In this case, the applicant has taken custody of Tendupatta jointly with the seller of the Tendupatta, which is to be held in such joint custody till such time



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as the payment for the Tendupatta is not made or till the end of the period of contract, along with interest in case of delay in payment beyond the stipulated time.

The query of the applicant is whether the act of taking joint custody of Tendupatta results in a supply of Tendupatta. In terms of section 97(2)(g), the applicant wishes to question whether:

- (a) *any particular thing done by the applicant , i.e. taking joint custody,*
- (b) *with respect to any goods, i.e. tendupatta,*
- (c) *amounts to or results in a supply of goods, i.e. the tendupatta taken in joint custody.*

1.8. Thus in view of the above, it is submitted that advance ruling may be sought by the Applicant in terms of Section 97(2)(g)

1.9. Further, Section 96 of the CGST Act provides for appointment of advance ruling authority and reads as under:-

"96. Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory."

... Emphasis Supplied

1.10. Hence, an Advance Ruling Authority appointed by the concerned State or Union Authority Government under concerned State or Union Territory Goods and Service Tax Act, shall be the deemed to be the Advance Ruling Authority for the purpose of CGST Act. The Section 96 of the Madhya Pradesh Goods and Service Tax Act, 2017, reads as under:-

"SECTION 96

(1) The Government shall, by notification, constitute an Authority to be known as the Madhya Pradesh Authority for Advance Ruling:

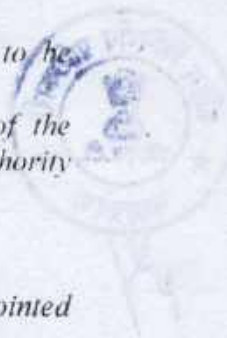
Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.

(2) The Authority shall consist of-

- (i) one member from amongst the officers of central tax; and*
- (ii) one member from amongst the officers of State tax, to be appointed by the Central Government and the State Government respectively.*

(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

Emphasis Supplied



- 1.11. The Applicant submits that in terms of the above referred section 96 of the Madhya Pradesh Goods and Service Tax Act, 2017, the Government of Madhya Pradesh constituted this authority as Madhya Pradesh Authority for Advance Ruling. The Applicant submits that by virtue of Section 96 of the Madhya Pradesh Goods and Service Tax Act, 2017, the questions for determination in advance ruling lie before the Madhya Pradesh Authority for Advance Ruling.
- 1.12. In view of the foregoing, the Applicant submits that it is eligible to file the present advance ruling application before the Madhya Pradesh Authority for Advance Ruling, Indore.

2. **Summary of the brief facts of the case:**

- 2.1. The applicant is engaged, inter alia, in purchase of Tendupatta from the MP State Minor Forest Produce (Trading and Development) Cooperative Federation Limited (hereinafter referred to as the Federation for the sake of brevity) for the purpose of trading of Tendupatta.
- 2.2. The applicant was the successful bidder in NIT No. तै.प. रदिनांक01.11.2016 and accordingly entered into an agreement for sale of Tendupatta with the Federation for purchase of Tendupatta from Lot No. 1777 in four instalments.
- 2.3. The applicant had paid the price for two lots and taken the delivery of the Tendupatta relating to the first two lots. The Federation has accordingly issued the following invoices :

- Invoice No. JBWML0024 dated 30.11.2017 for Rs. 11881751.00 and
- Invoice No. JBWML0041 dated 30.01.2018 for Rs. 11788569.00

- 2.4. Before the payment of the next two installments could be made, the Tendupatta was destroyed by fire, while still in the godown of the Federation.

- 2.5. The Federation, in terms of the agreement, received the insurance money for the destroyed Tendupatta kept in the godown and appropriated the proceeds as under:

S.No.	Particulars	Amount (Rs)
1.	EMD	3742050.00
2.	Insurance Claim proceeds	17787668.00
3.	Balance from the 2 nd installment	29683.00
Total		21559401.00

- 2.6. The Federation vide its letter vide no. क्रमांक / तै.प./19/731 dated 31.05.2019, claimed an amount of Rs. 2,39,47,447.00 from the applicant and after making the appropriations as above; demanded a further sum of Rs. 2388046.00 being the balance amount for the 3rd and 4th installments after the appropriation as



above. The letter demanding the money is enclosed herewith, marked as Annexure – 1.

- 2.7. While computing the demand, the federation under the presumption that the Tendupatta stored under the joint custody was supplied to the applicant and therefore applicant was liable to pay GST on the same.

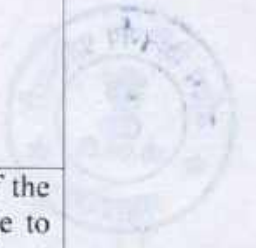
3. **Summary of the point of law involved:**

3.1. **The terms of the agreement and their implication:**

S.No	Term of the agreement	Implication
7.	“5(IV) संग्रहणकेउपरांतक्रेताकेप्रतिनिधि कोसमस्तसंग्रहिततेंदूपत्तासंग्रहणके 48 घंटेकेभीतरहरीअवस्थामेंपरिदानदि याजायेगा।.....”	At the time of the agreement the goods were not identified and therefore, the case is that of sale of future goods.
8.	“6(ब) क्रेताकोगोदामसेतेंदुपत्तापरिदान कीसुविद्दहलदिएजानेकीस्थितिमेंउ सेप्रबंधसंचालक, जिलायूनियनद्वारा29.04.2017 तकआदेशितसंघ /समिति / विभागीयगोदाममेंतथाऐसागोदामउ पलब्धनकरायेजानेकीस्थितिमेंप्रबंध संचालकजिलायूनियनअथवाउनके द्वाराइसहेतुप्राधिकृतअधिकारीद्वारा इसउद्देश्यकेलिएअनुमोदितअपने गोदाममें, दोहरेतालेमेंनिम्नशर्तोंपरनिरापदरख नेकीसुविधादीजासकेगी।.....”	The goods were to be delivered from the godown and till delivery of the goods, they were to be kept under joint lock for their safety.
9.	“6(ब)(1)..... क्रेताद्वाराकिसीकिश्तकीदेय तिथिकेपूर्वउसकिश्तकीनीचेदशाये अनुसारआंशिकराशिएवमउसपरदे यसमस्तकरआदिजमाकरजमाकी गईराशिकेअनुपातमेंपत्तेकापरिदान प्राप्तकियाजासकेगा। “ “6(स)(1)	The delivery of the goods was not made to be made to the applicant (Successful bidder) unless the whole of the amount was paid and in case of delay in payment, interest was paid along with the sum due.



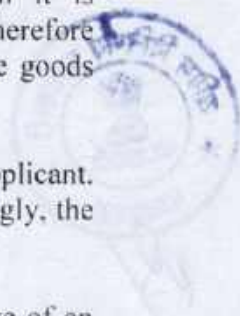
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	<p>क्रेता तेंदुपत्तेका कंडिका क्रमांक 6(B) के अनुसार आदेशित/ अनुमोदित गोदामों से परिदान लेगा तथा वह गोदाम के अंदर से बोरा हटाने का समस्त व्यय स्वयं वहन करेगा। क्रेता को पत्तों का परिदान केवल तभी दिया जायेगा जबकि देय राशिके विलम्बित भुगतान की स्थिति में व्याज सहित, पूर्ण भुगतान उसके द्वारा कर दिया गया है।</p>	
10.	<p>“(इ) क्रेता को उसके द्वारा क्रय किये गए तेंदुपत्ते को गोदामों से केवल करार की अवधि में ही हटाने का अधिकार है तथा करार अवधि समाप्त होने पर उसका तेंदुपत्तों की शेष मात्र पर कोई अधिकार नहीं होगा तथा ऐसे तेंदुपत्ता संघ की संपत्ति बन गयामाना जाएगा।.....”</p>	<p>The goods were not delivered or sold to the applicant till such time as all the conditions of the agreement were not fulfilled by the applicant.</p>
11.	<p>“10. करार नामे का अनुपालन - यदि पूर्वोक्त एवं निविदा सूचना में विनिर्दिष्ट परिदान तथा क्रय की शर्तों का पूर्णतः पालन परिपालन नहीं किया जाता है, तो पत्तों को परिदत्त तथा क्रय कियानहीं समझा जाएगा।”</p>	<p>In case of non-compliance of the terms and conditions of the contract in toto, the Tendupatta shall be deemed not to have been delivered or sold.</p>
12.	<p>“9. विक्रय प्रमाण पत्र जारी करना संघ या उसके द्वारा प्राधिकृत अधिकारी या वनमंडलाधिकारी क्रेता को तेंदुपत्तों के परिदान के पश्चात् मध्य प्रदेश तेंदुपत्ता (व्यापार विनियमन) नियमावली, 1966 के अंतर्गत प्रावधानित प्रारूप “ठ” में उसका विक्रय प्रमाण पत्र प्रदान करेगा।”</p>	<p>Sale letter / certificate is to be issued for goods sold.</p>



- 3.2. The taxable event for levy of GST is thus "supply". The moment there is supply, the liability to GST arises, even though the payment of GST may have happened prior to the supply or is to happen at a later date as per the machinery provisions.
- 3.3. In this case, supply, if any is in the form of a sale. Therefore, to ascertain whether supply has happened, it has to be ascertained, whether sale has taken place.
- 3.4. The term sale is not defined under the Act and therefore, recourse shall be had to the Sale of Goods Act, 1930. Accordingly, based on the facts of the case, as per Section 4(3) of the Sale of Goods Act, 1930, the transaction is in the nature of an agreement to sell and not sale *per se*.
- 3.5. Further, in this case, since the transaction relates to future goods, as per Section 6 of the Sale of Goods Act, 1930, the agreement is in the nature of an agreement to sell.
- 3.6. As per the terms of the agreement, even though the goods were in joint custody, the delivery of the goods was not given to the applicant since in case of joint custody, the delivery was to be given from the Godown. Please refer to Clause 6(ब) of the contract, reproduced in the application.
- 3.7. The delivery of the goods was to be given only upon the payment of the amount of the due installment along with interest for the delay in payment from the stipulated date, if any.
- 3.8. Under the Sale of Goods Act, 1930, Section 23 states that in the case of sale of unascertained goods, the property in the goods passes on when it is appropriated to the contract. In this case, the goods are destroyed and therefore cannot be appropriated to the contract. Therefore, the property in the goods has not passed on to the applicant.
- 3.9. The goods were insured in the joint name of the Federation and the Applicant. Therefore, the Federation has insurable interest in the goods. Accordingly, the risk in the goods had not passed on to the applicant.
- 3.10. Further, in terms of Section 8 of the Sale of Goods Act, 1930, in case of an agreement to sell, if the goods are destroyed prior to passing of the risk to the buyer, the agreement becomes avoidable. Since the risk has not passed to the buyer in terms of Section 23 of the Sale of Goods Act, 1930, after the destruction of the goods, the contract becomes and avoidable agreement to sell.



- 3.11. In terms of Section 12 of the GST Act, time of supply of the goods, is earlier of the due date of issue of invoice and receipt of payment. In this case, neither has happened. Also, since the goods stand destroyed, neither of the acts can happen now.
- 3.12. Joint reading of the provisions of the Sale of Goods Act, 1930 and the provisions of the GST Act shows that:
- h) accepting joint custody of the goods without the rights and privileges of ownership does not constitute completion of sale in the eyes of law, further such custody was not interpreted as delivery or sale of Tendupatta to the applicant;
 - i) the agreement of the Federation with the applicant was an agreement to sell;
 - j) sale had not been made before the fire destroyed the goods since there was no delivery or payment of consideration which are the most important events for sale to occasion under the terms of the agreement;
 - k) delivery of the goods had not been made before the destruction of the goods since the delivery could only have been made after the full payment of the goods being delivered along with the interest due for the period of delay in making the full payment;
 - l) the property in goods and the risk were both with the Federation and had not passed to the applicant before the destruction of the goods since the Federation obtained insurance as a person with insurable interest in the property;
 - m) the destruction of the goods resulted in the agreement to sell becoming and avoidable contract; and
 - n) in absence of the sale of the goods, there was no supply of Tendupatta giving rise to a liability to pay GST.

6.4. During the course of the hearing on 01.10.2020 the following queries were raised –

- (a) As per clause (a) of Section 95 of GST Act, the Advance ruling means a decision provided by the Authority or the Appellate Authority for Advance Ruling on matters specified in sub-section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant
- (b) It is observed that the questions referred by you are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by you, therefore, why not your application should be rejected being outside the purview of Advance Ruling.
- (c) Moreover, as per your submissions, if the goods under joint custody of yourself and the Federation, is not to be treated as supply, then explain the following :
 - i) what is the purpose and requirement to keep the said goods under joint custody of yourself and the Federation;



- ii) why you are a beneficiary in insurance of the said stock, if the supply is not complete;
- iii) why rent of the godown, in which said stock is stored, is payable by you; and
- iv) why interest is payable by you for delay in payment pertaining to the said stock, if the supply is not complete.

6.5. Further, in response to the queries raised during the Personal Hearing on 01.10.2020, the counsel for the applicant on 12.10.2020 submitted as under on email :

“During the course of the hearing, the following queries were raised:

- I. As per clause (a) of Section 95 of GST Act, the Advance ruling means a decision provided by the Authority or the Appellate Authority for Advance Ruling on matters specified in sub-section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant. It is observed that the questions referred by you are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by you, therefore, why not your application should be rejected being outside the purview of Advance Ruling.
- II. Moreover, as per your submissions, if the goods under joint custody of yourself and the Federation, is not to be treated as supply, then explain the following:
 - (a) what is the purpose and requirement to keep the said goods under joint custody of yourself and the Federation;
 - (b) why you are a beneficiary in insurance of the said stock, if the supply is not complete;
 - (c) why rent of the godown, in which said stock is stored, is payable by you; and
 - (d) why interest is payable by you for delay in payment pertaining to the said stock, if the supply is not complete.

The point-wise reply to the queries are under:

- 1. During the course of the hearing, it was stated that the application is not admissible on account of the fact that it is not covered under section 95(a) of the CGST Act. In this regard, we have to submit as under:
 - 1.1. The definition of Advance Ruling as per Section 95(a) is as under:

“95(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 [or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;”



As per the definition, the ingredients of an Advance Ruling are:

- a) It is a decision on matters or on questions specified in Section 97(2);
- b) The matter or the question is in relation to supply of goods or services by the applicant;
- c) The supply may be one that has already been undertaken or proposed to be undertaken.

1.2. The definition states that the question should be in relation to supply and not about supply. There is nothing in the text of the section that states that the question can only be about supply. Once this assumed pre-condition is done away with, it becomes clear how subject matter of the questions listed in Section 97(2) get covered under an Advance Ruling as per Section 95(a). The definition of Advance Ruling contains the term "in relation to", which enlarges the scope of a provision.

1.3. The term "in relation to" is found in the erstwhile law relating to Central Excise Duty as well as Service Tax. This term has been interpreted and on the basis of the interpretations, the orders have been passed. One specific instance is the definition of Input in Cenvat Credit Rules, which has been much debated and contributed significantly to Central Excise and Service Tax disputes.

1.4. In the definition of inputs under Rule 2(l) of the Cenvat Credit Rules, 2004, term used is "in relation to", which was interpreted by the courts as having enlarged the definition. The text of the provision is as under:

"2(l) "Input Service" means any service -

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

(emphasis supplied)

1.5. In this regard, kindly see the matter of COMMISSIONER OF C. EX., NASIK Vs CABLE CORPORATION OF INDIA LTD. reported in 2008 (12) S.T.R. 598 (Tri. - Mumbai), where the Honorable CESTAT stated as under:

"7.From the above definition it is very clear that the input services besides being used in or in relation to the manufacture of final



products and clearances of final products from the place of removal includes a plethora of other services such as service used in relation to setting up, modernization, renovation or repairs of factory, premises of provider of input service or an office relating to such factory or premises, advertisement or sales, activities of business, accounting, auditing, financing, recruitment, quality control, training and coaching etc. and therefore its scope is much larger than being used directly or indirectly in relation to manufacture. The decision cited by Revenue are therefore not relevant as those decision have not considered the inclusive part of input service as defined under Rule 2(l) of Cenvat Credit Rules and these decisions have only considered the term in or in relation to the manufacture. Since Rent-a-Cab service is used for bringing employees to work in the factory for manufacture of goods it has to be considered as being used indirectly in relation to the manufacture or as part of business activity for promoting the business as any facility given to the employees will result in greater efficiency and promotion of business.”

- 1.6. Also, in the matter of VICTOR GASKETS INDIA LTD. Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-I reported in 2008 (10) S.T.R. 369 (Tri. - Mumbai), the Honorable Tribunal stated as under:

“11. The illustrative list of activities relating to business in the inclusive definition of “input service” as reproduced above, consists of accounting, auditing, financing, recruitment and quality control, coaching and training, computer, networking credit rating, share registry, security.

The credit of service tax paid on activities like coaching and training, credit rating, although not directly or indirectly related to manufacture of goods, is admissible as input service credit to a manufacturer of final products as well as to output service provider treating the same as activities in relation to business. In the light of the above, I am of the view that the canteen service provided within the factory premises of the appellants exclusively for the factory workers is an activity in relation to the business of the appellants, and hence can be regarded as ‘input service’ within the ambit of Rule 2(l) of the Cenvat Credit Rules, 2004.

In the present cases, the canteen facility, although not specifically stated in the list of activities in the definition of the ‘input service’ under Rule 2(l) *ibid* yet it is an activity relating to the business of the appellants as this facility is using provided exclusively only to the employees of the factory of the appellants within the premises of the factory. The canteen facility is beneficial for the workers as they are served with food stuff, etc. at concessional rates and it is they who are engaged in the business of the appellants, which is nothing but the manufacture of goods, in any case, the canteen facility provided can also be said to be used by the manufacturer indirectly as the canteen facility is only for the benefit of the appellants’ employees, who play a significant role in the activity of manufacture.”

Thus, the Tribunal and Courts have consistently held the term “in relation to” expands the scope of the term in question.



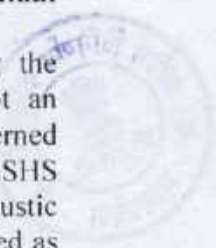
- 1.7. Further, the Honorable Apex Court has also interpreted the term "in relation to" in like matter, in the matter of *Doypack Systems (Pvt.) Ltd. v. Union of India* - 1988 (36) E.L.T. 201 (S.C.) after a magisterial analysis of precedential authority reiterated the principle that the expression "in relation to" signifies a broad expression indicating comprehensiveness which might both have direct as well as an indirect significance, depending on the context. Apart from pointing out that the expression "in relation to" has been interpreted as signifying the widest amplitude, the Court pointed out that the expression "includes" signifies an inclusive definition and meaning, is illustrative and not exhaustive. The relevant extract from the Apex Court judgement is as under:

"48. The expression "in relation to" (so also "pertaining to"), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Aziz (A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10, following and approving Nitai Charan Bagchi v. Suresh Chandra Paul (66 C.W.N. 767), Shyam Lal v. M. Shayamlal (A.I.R. 1933 All. 649) and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

(emphasis supplied)

- 1.8. In the matter of Collector of Central Excise Vs Solaris Chemtech Limited reported in 2007 (214) E.L.T. 481 (S.C.) the Apex Court referring to the Apex Court Judgement of *Collector of Central Excise v. Raiasthan State Chemical Works* reported in 1991 (55) E.L.T. 444 (S.C.), stated that it has been held that any operation in the course of manufacture, if integrally connected with the operation which results in the emergence of manufactured goods, would come within the term "manufacture". **This is because of the words used in Rule 57A, namely, "goods used in or in relation to the manufacture of the final products"**. The relevant extract from the order is as under:

"8. In our view, there is no merit in this civil appeal filed by the Department. At the outset, we may clarify that electricity is not an excisable item. Further, in this batch of civil appeals we are concerned with the electricity which is generated inside the plant by heating of LSHS and which is captively consumed and used to manufacture cement/caustic soda. Rule 57A, quoted above, has an Explanation clause which stated as to what inputs are included in MODVAT credit. Explanation clause (c) refers to "input used as fuel". This clause was introduced by Notification



No. 4/94. At that time the Government made it clear that inputs used as fuel were entitled to MODVAT credit. That fuel either utilized directly or for generating electricity, as an intermediary product, is integrally connected with several operations which results in the emergence of the final product, namely, cement/caustic soda. It is important to note that without utilization of LSHS, it is not possible to manufacture cement/caustic soda. The electrolysis process is dependent on continuous flow of electricity. If there is disruption in the supply of electricity from the Electricity Board then the entire plant of the assessee would fail and the manufacture of cement/caustic soda would not take place. Therefore, LSHS would come within the ambit of the expression "used in or in relation to the manufacture of the final product". Further, in the case of *Collector of Central Excise v. Raiasthan State Chemical Works - 1991 (55) E.L.T. 444 (S.C.)*, it has been held that any operation in the course of manufacture, if integrally connected with the operation which results in the emergence of manufactured goods, would come within the term "manufacture". This is because of the words used in Rule 57A, namely, "goods used in or in relation to the manufacture of the final products". Electricity is one form of heat. It gets generated in several ways. LSHS is a fuel used in the generation of electricity. Since, electricity is self-generated and since it comes into existence as an intermediary product, its utilization for production of final product is crucial. Hence, MODVAT credit on LSHS used in production of electricity cannot be denied. Lastly, we may point out that in order to appreciate the arguments advanced on behalf of the Department one needs to interpret the expression "in or in relation to the manufacture of final products". The expression "in the manufacture of goods" indicates the use of the input in the manufacture of the final product. The said expression normally covers the entire process of converting raw-materials into finished goods such as caustic soda, cement etc. However, the matter does not end with the said expression. The expression also covers inputs "used in relation to the manufacture of final products". It is interesting to note that the said expression, namely, "in relation to" also finds place in the extended definition of the word "manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944 (for short, 'the said Act'). It is for this reason that this Court has repeatedly held that the expression "in relation to" must be given a wide connotation. The Explanation to Rule 57A shows an inclusive definition of the word "inputs". Therefore, that is a dichotomy between inputs used in the manufacture of the final product and inputs used in relation to the manufacture of final products. The Department gave a narrow meaning to the word "used" in Rule 57A. The Department would have been right in saying that the input must be raw-material consumed in the manufacture of final product, however, in the present case, as stated above, the expression "used" in Rule 57A uses the words "in relation to the manufacture of final products". The words "in relation to" which find



place in Section 2(f) of the said Act has been interpreted by this Court to cover processes generating intermediate products and it is in this context that it has been repeatedly held by this Court that if manufacture of final product cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words "in relation to the manufacture" have been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract goods which do not enter into finished goods. In the case of *M/s. J.K. Cotton Spinning and Weaving Mills, Co. Ltd. v. The Sales Tax Officer, Kanpur and another* - AIR 1965 S.C. 1310, this Court has held that Rule 57A refers to inputs which are not only goods used in the manufacture of final products but also goods used in relation to the manufacture of final products. Where raw-material is used in the manufacture of final product it is an input used in the manufacture of final product. However, the doubt may arise only in regard to use of some articles not in the mainstream of manufacturing process but something which is used for rendering final product marketable or something used otherwise in assisting the process of manufacture. This doubt is set at rest by use of the words "used in relation to manufacture". In the present case, the LSHS is used to generate electricity which is captively consumed. Without continuous supply of such electricity generated in the plant it is not possible to manufacture cement, caustic soda etc. Without such supply the process of electrolysis was not possible. Therefore, keeping in mind the expression "used in relation to the manufacture" in Rule 57A we are of the view that the assesseees were entitled to MODVAT credit on LSHS. In our opinion, the present case falls in clause (c), therefore, the assesseees were entitled to MODVAT credit under Explanatory clause (c) even before 16-3-95. Inputs used for generation of electricity will qualify for MODVAT credit only if they are used in or in relation to the manufacture of the final product, such as cement, caustic soda etc. Therefore, it is not correct to state that inputs used as fuel for generation of electricity captively consumed will not be covered as inputs under Rule 57A."

- 1.9. Thus, when we look at the scope of Advance Ruling, all activities, which are *in relation to* supply of goods or services would fall under the scope of the an Advance Ruling. Extending this proposition further, the questions covered u/s 97(2) do not merely relate to a supply but to activities of a supplier.

S.No.	Provision	Relation
1.	classification of any goods or services or both;	The query of classification may be related to classification of a inward into Capital Goods or Inputs. This question would be covered under this clause and is in relation to supply being made by the applicant, even though the



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		inward supply is made by another supplier
2.	applicability of a notification issued under the provisions of this Act;	Notification may be related to a matter which does not involve supply being made by the applicant, but be in relation to the supply being made by the applicant.
4.	admissibility of input tax credit of tax paid or deemed to have been paid;	Question relating to ITC cannot be on account of supply but can always be in relation to supply.
6.	whether applicant is required to be registered;	Question regarding liability to get registered cannot be with respect to a supply, but is in relation to a supply
7.	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.	Any act of omission or commission may result in a supply. The supply need not result in the hands of the applicant. However, the act of omission or commission must be by the applicant.

From the above table, there appears to be a conflict in the language of Section 95(a) 97(2). In such cases, the Rule of interpretation – Harmonious Construction is to be resorted to. Law as propounded is not always rational or follows logic. Court does not import rationality in an enactment under the guise of interpretation. The law, as enacted should be interpreted in such a manner as to attempt to reconcile, to harmonize, to adjust the overlapping and often conflicting claims and demands, so that the sacrifice of the conflicting provisions is seldom made.

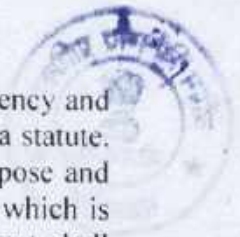
1.10.
1.10.1.

Harmonious Construction:

The Rule of Harmonious Construction is used to avoid any inconsistency and repugnancy within a section or between a section and other parts of a statute. The rule follows a very simple premise that every statute has a purpose and intent as per law, and should be read as a whole. The interpretation which is consistent with all the provisions and makes the enactment consistent shall prevail. The doctrine follows a settled rule that an interpretation that results in injustice, hardship, inconvenience, and anomaly should be avoided. The interpretation with the closest conformity to justice must be picked. The Supreme Court laid down 5 main principles of the 'Doctrine of Harmonious Construction'-



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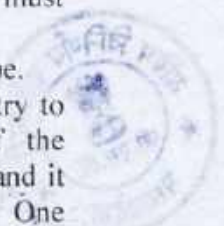
- The courts must avoid a 'head of clash' of contradictory provisions and they must construe the contradictory provisions so as to harmonize them.^{vi}
- When it is not possible to completely reconcile the differences in contradictory provisions, the court must interpret them in such a way so as to give effect to both provisions as much as possible.
- Courts must keep in mind that the interpretation which reduces one provision to a useless standing is against the essence of 'Harmonious Construction'.
- To harmonize the provisions is not to render them fruitless or destroy any statutory provision.
- The provision of one section cannot be used to render useless the other provision, unless the court, despite all its efforts, finds a way to reconcile the differences.

1.10.2. It is endeavored to find out which provision is more general in nature so as to construe the more general provision and exclude the specific one. The maxims *Generalia Specialibus* *Non-Derogant*, and *Generalia Specialibus Derogant* catches the essence of the doctrine. The former means that general things do not derogate from special things, and the latter means that special things derogate from general things.

1.10.3. Further, this principle is also used to resolve conflicts between two separate acts and in the making of statutory orders and rules. But if a person has two remedies, one being general and the other being specific, they continue to hold good for the concerned person until he elects one of them.

1.10.4. After analyzing various case laws, the Courts have devised certain steps for the better applicability of the said doctrine-

- Giving full effect to both the provisions and reducing the contrary nature and/or conflict between them.
- Both the provisions that are conflicting in nature or are repugnant to each other are to be read as a whole and the entire enactment in question must be considered.
- Of the two conflicting provisions, choose the one that is wider in scope.
- Compare the wider provision with the narrow provision and then try to interpret the wider provision to see further consequence. If the consequence is as reasonable as to harmonize both the provisions, and it gives their full effect separately, no further inquiry is needed. One important aspect to be kept in mind is that the legislature while framing the provisions was fully aware of the situation which they entered to cover and therefore all provisions enacted require to be given their full effect on scope.
- When one section of an Act takes away powers conferred by another Act, a non-obstante clause must be used.



- It is imperative that the Court must try to find out the extent to which the legislature has intended to give one provision an overriding power over another provision. In the case of *Eastbourne Corporation v. Fortes Ltd.* it was held that if two contradictory sections cannot be reconciled, then the last section must prevail. Though this is not a universal rule.

1.11. Judicial Pronouncements:

1.11.1. Further resort may be had to the Advance Rulings already passed under the GST, a case in point is as under:

S.No.	Citation	Matter decided
1.	2020 (35) G.S.T.L. 456 (App. A.A.R. - GST - Mah.)	The Appellate AAR decided that the supply by JSW Steel Limited to JSW Energy Limited is Job Work, not attracting GST. In this case, JSW Energy Limited was the applicant and the supply by JSW Steel Limited was an inward supply to it. The order clearly covered a matter relating to supply by JSW Energy Limited, even though the supplier in this case was JSW Steel Limited.

1.11.2. Thus it is clear that definition of Advance Ruling given in Section 95(a) is not to be seen as solely relating to the act of supply being made but, extends to all activities carried on in relation to supply, which clearly includes procurement of inputs and input services in relation to a supply. In this case, the applicant is engaged in the trading of Tendupatta and the question is regarding purchase of Tendupatta. Clearly the question is on a matter in relation to supply.

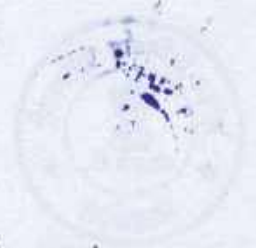
1.12. The present application has been made u/s 97(2)(g), which states as under:

(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.

1.13. The ingredients of this provision are:

- a) The matter should relate to an act done by the applicant;
- b) The act should be in relation to any goods or service;
- c) the question should be whether such act results in supply;

1.14. It is very important to note that it is not stated in the provision that the supply should be made by the applicant. This fact is conspicuous by absence. The provision only states that the act "results in supply" but it does not state that the act results in supply by the applicant. Thus, it means that there should be an act by applicant, such act should be in relation to a supply and that the act of the applicant should result in supply.



1.15. In this case, the applicant has accepted joint custody of the goods, that are yet to be paid for and the query is whether acceptance of such joint custody results in supply of such goods. It is therefore, beyond any doubt that the question is covered under section 95(a), read with Section 97(2)(g).

1.16. **Concept of Locus standi:**

1.16.1. Locus standi is an essential tool for the realisation of rights. The concept of standing is intertwined with the right of access to justice. Furthermore, effective access to justice is considered as the most basic requirement of a legal system, which purports to guarantee legal rights. The essence of the provision is that the applicant should have *locus standi* in the matter and it should not result in frivolous questions being asked by applicants who do not have any interest in the transaction in question *per se*. Thus, once the applicant has locus standi with respect to the goods, he cannot be precluded from raising a question in an Advance Ruling.

From the above averment it is clear that the subject matter of the question is solely in relation to the supply made by the applicant and is therefore covered under section 95(a) read with Section 97(2).

2. **Special nature of the agreement:**

2.1. Before the agreement is interpreted in light of the GST Laws and for the purpose of its application to the Advance Ruling sought, the background of the agreement has to be understood and appreciated for its peculiar nature. The agreement that the applicant entered into with the Federation was for purchase of Tendupatta and the agreement was in pursuance of a tender for the sale of Tendupatta, where the applicant was the highest bidder. Therefore, in the event that the applicant was not able to honor the offer made in the tender, the Federation stood to lose money when selling to another person for a sum lower than that offered by the applicant. Therefore, the agreement between the applicant and the federation contained specific clauses to ensure that there was no monetary loss to the Federation.

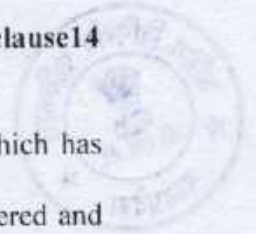
2.2. The agreement contained the following clauses, attempting to protect the financial interest of the Federation, which are not found in a normal sale transaction. The clauses are as under:

(a) **consequences that follow cancellation of the agreement [clause 14 (III)]:**

- a. Forfeiture of EMD;
- b. Forfeiture of the Tendupatta kept under joint custody, which has been paid for but not delivered;
- c. Sale of Tendupatta which has been paid for but not delivered and sale of Tendupatta which has not been paid for;
- d. In case Tendupatta is not sold under the first tender after cancellation of the agreement with the applicant (hereinafter



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- referred to as the subsequent tender), recovery of the agreed price from the applicant;
- e. In case the Tendupatta is sold under the subsequent tender, the proceeds realized shall be adjusted against the amount receivable from the applicant;
 - f. If the proceeds from the subsequent tender is in excess of the amount due from the applicant, such excess shall be paid to the applicant;
 - g. If the proceeds from the subsequent tender is lesser than the amount due from the applicant, such shortage shall be recovered from the applicant as land revenue;
 - h. If the proceeds from the subsequent tender is in excess of the amount due from the applicant, the federation shall have the right to retain such excess realization and the such excess shall be paid to the applicant;
 - i. All the expenditure incurred on the collection of the loss amount by federation shall be borne by the applicant; and
 - j. The federation shall recover all penalties levied and compensation.

(b) Acceptance of quality of the Tendupatta:

Under the agreement, upon collection of Tendupatta, the applicant was required to accept the Tendupatta for its quality. However, if the applicant was not satisfied with the quality and refused to accept the Tendupatta, the Tendupatta was to be inspected by the officials of the Federation and their assessment regarding fitness of Tendupatta for the purpose of making Bidi was to be final. Therefore, even if the Tendupatta was not up to the mark as per the applicant, he was bound to pay for the same the officials of the Federation pronounced it to be fit. In this regard kindly see para 5(IV) of the agreement. The relevant extract from the para is as under:

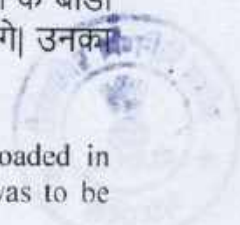
“5(IV)

.....इस प्रकार आवेदन प्रस्तुत किये जाने पर वर्णित तेंदू पत्ते का निरिक्षण उप वन मंडलाधिकारी या वन मंडलाधिकारी द्वारा अधिकृत किसी अन्य अधिकारी के द्वारा किया जावेगा जो प्रस्तुत तेंदू पत्ते के बीडी बनाने के अयोग्य होने अथवा नही होने के सम्बन्ध में निर्णय लेंगे। उनका यह निर्णय अन्तिम एवं क्रेता पर बंधनकारी होगा।.....”

From the above narrative it is clear that the agreement was loaded in favour of the Federation and the cost of any non-compliance was to be borne by the applicant.

(c) Conditions in the agreement regarding payment of interest, godown charges and other expenses:

a. Interest :



- i. The payment for Tendupatta was to be made in four installments. The agreement at clause 6(1) specified the due dates of payment, which were as under:

Installment	Due date
1 st	05.10.2017
2 nd	23.11.2017
3 rd	05.01.2018
4 th	23.02.2018

Extract from the agreement is as under:

“6(ब)(1)

.....क्रेता पूर्ण क्रय मूल्य का भुगतान समस्त देय करों सहित प्रबंध संचालक जिला यूनियन के कार्यालय में चार बराबर किश्तों में प्रबंध संचालक, मध्य प्रदेश लघु वनोपज (व्यापार एवं विकास) सहकारी संघ मर्यादित के नाम से जिला युनिऑन के मुख्यालय की किसी अनुसूचित बैंक की शाखा पर देय बैंक / डिमांड ड्राफ्ट / RTGS/NEF/State Bank of India Internet Banking (I-Collect) (केवल संघ मुख्यालय हेतु) द्वारा निम्न तिथियों को या उसके पूर्व करेगा।

किश्त	किश्तों कि तिथि
प्रथम	05.10.2017
द्वितीय	23.11.2017
तृतीय	05.01.2018
चतुर्थ	23.02.2018

क्रेता द्वारा किसी किश्त की देय तिथि के पूर्व उस किश्त की नीचे दर्शाए अनुसार आंशित राशि एवं उस पर देय समस्त कर आदि जाकर जमा की गयी राशि के अनुपात में पत्ते परिदान प्राप्त किया जाएगा।”

- ii. In case of delay in payment of the installment, interest was to be paid. The relevant clause of the agreement is as under:

6(ब)(3).....

“यदि क्रेता किसी किश्त की देय राशि या इस करारनामे के अंतर्गत देय अन्य कोई भी राशि का देय तिथि तक भुगतान करने में असफल रहता है, तो वह विलम्बित अवधि के लिए ०.०४० प्रतिशत प्रतिदिन की डर से ब्याज देगा।”

b. Godown Charges:

- i. As per the agreement, the applicant was required to pay the price for the Tendupatta at the collection centre after acceptance of the Tendupatta for quality. However, the



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agreement further stated that in case the applicant was not able to make the payment, the Federation was to extend a facility of storage of the Tendupatta at a godown. In this regard, kindly see clause 6(ब) of the Agreement, the relevant extract of which is as under:

“6(ब)

क्रेता को गोदाम से तेंदुपत्ता परिदान की सुविद्दहल दिए जाने की स्थिति में उसे प्रबंध संचालक, जिला यूनियन द्वारा 29.04.2017 तक आदेशित संघ / समिति / विभागीय गोदाम में तथा ऐसा गोदाम उपलब्ध न कराये जाने की स्थिति में प्रबंध संचालक जिला यूनियन अथवा उनके द्वारा इस हेतु प्राधिकृत अधिकारी द्वारा इस उद्देश्य के लिए अनुमोदित अपने गोदाम में, दोहरे ताले में निम्न शर्तों पर निरापद रखने की सुविधा दी जा सकेगी।

- ii. Under the agreement if the applicant did not wish to store goods in the allotted godown even then godown rent @ 4/- per bag per month for 8 months was to be paid by the applicant. Extract from the relevant clause is as under:

“6(ब)

..... परन्तु यदि क्रेता उस आदेशित गोदाम में तेंदू पत्ते का भण्डारण करने का इच्छुक नहीं है तो वह प्रबंध संचालक जिला यूनियन द्वारा आदेशित संघ / समिति / विभागीय गोदाम की क्रेता को आवंटित भण्डारण क्षमता के आधार पर 4/- रूपए प्रति वास्तविक बोरा प्रति माह 8 माह का किराया अग्रिम में भुगतान कर इस बाध्यता से मुक्त हो सकेगा।.....”

c. Other Charges:

- i. In case the delivery of Tendupatta was to be taken from the godown and not the collection centre, the applicant was required to pay charges for removal of Tendupatta from the dgodown. The relevant clause is as under:

“6(स)(1)

क्रेता तेंदुपत्ते का कंडिका क्रमांक 6(B) के अनुसार आदेशित/ अनुमोदित गोदामों से परिदान लेगा तथा वह गोदम के अंदर से बोरा हटाने का समस्त व्यय स्वयं वहन करेगा। क्रेता को पत्तों का परिदान केवल तभी दिया जायेगा जब कि देय राशि के विलम्बित भुगतान की स्थिति में ब्याज सहित, पूर्ण भुगतान उसके द्वारा कर दिया गया है।”

2.3.

On the whole, the agreement bound the applicant to pay the agreed amount along with the interest on any delay in payment, charges for loading and unloading at the godown and godown rent. In the event that the applicant was unable to make payment of the interest and charges, the Tendupatta was not to



be delivered to the applicant and on expiry or termination of the agreement, the amount of agreed sale value and charges were to be recovered from the sale price of the Tendupatta vide the subsequent tender. The agreement did not give an option to the applicant to pay any sum on account of breach of the contract and to exit the contract.

2.4. The conditions regarding termination of the agreement are stated in clause 14(I) of the agreement and state that in case of failure to pay the installment in time or violation of any other condition, the Federation may cancel the agreement. Once the agreement is terminated, the Federation has the rights given in Clause 14(III), which include recovery of loss to the Federation.

3. Coming to the specific queries in the Show Cause Notice, we submit as under:

3.1. **What is the purpose and requirement to keep the said goods under joint custody of yourself and the Federation;**

3.1.1. Before the query is answered, we wish to make it clear that the godown was under double lock, but the control was with the Federation and pray that this fact be borne in mind while coming to any conclusion in this matter.

3.1.2. The applicant was required to take delivery of the Tendupatta from the collection centre. However, in the event that the applicant was not able to take the delivery at the collection centre, it was deemed that the applicant did not want to take delivery from the collection centre. In such case, as per the agreement, the Tendupatta was to be delivered from the Godown instead of the Collection Centre. The storage in godown was in terms of clause 6(अ)(III). The text is as under:

“6(अ)(III) :

क्रेता द्वारा उप कण्डिका (I) के अनुसार देय राशी एवं आवेदन पत्र दिनांक 29.04.2017 तक प्रबंध संचालक जिला यूनियन के कार्यालय में प्रस्तुत न करने पर यह मान लिया जावेगा कि क्रेता संग्रहण केंद्र से तेंदुपत्ता मुक्त नहीं कराना चाहता है एवं तब उसे तेंदुपत्ते का गोदाम से ही निर्धारित रीति से परिदान दिया जावेगा।”

3.1.3.

When clause 6(अ)(III) came into operation, the Tendupatta was to be stored in the godown allotted by the Federation. The storage of the Tendupatta was under the Joint Custody of the applicant and the Federation, but under the control of the Federation. This requirement of Joint Custody was in terms of Clause 6(ब) of the agreement. The text of the clause is as under

“6(ब)

क्रेता को गोदाम से तेंदुपत्ता परिदान की सुविधा दिए जाने की स्थिति में उसे प्रबंध संचालक, जिला यूनियन द्वारा 29.04.2017 तक आदेशित संघ / समिति / विभागीय गोदाम में तथा ऐसा गोदाम उपलब्ध न कराये जाने की स्थिति में प्रबंध संचालक जिला यूनियन अथवा उनके द्वारा इस हेतु प्राधिकृत अधिकारी द्वारा इस उद्देश्य के लिए अनुमोदित अपने गोदाम में, दोहरे ताले में निम्न शर्तों पर निरापद रखने की सुविधा दी जा सकेगी।



The control over the Tendupatta in the godown was with the Federation in terms of Clause 6(ब)(5). The text of the provision is as under:

“6(ब) (5)

तेंदुपत्ता क्रेता कि अभिरक्षा, देखरेख, पर्यवेक्षण तथा जोखिम पर, लेकिन प्रबंध संचालक जिला यूनियन के नियंत्रण में रखा जाएगा और इस शर्त पर कि गोदाम में संघ का ताला लगाकर अथवा किसी ऐसी अन्य प्रक्रिया, जैसी कि प्रबंध संचालक जिला यूनियन ने आदेशित की हो, के अनुसार अभिगमन था नियंत्रण रखने का पूर्ण अधिकार होगा।”

3.1.4. The reason for joint storage was as under:

- a) This Tendupatta was not paid for and therefore, was not treated to be sold to the applicant in terms of clause 10 of the agreement. The Federation under Clause 14(III) had the right to seize the Tendupatta kept in joint custody to recover dues of the Federation. This seizure could be made even if the Tendupatta was paid for. Therefore, to be able to seize the Tendupatta, the Federation did not hand over the custody of the Tendupatta to the applicant. The relevant extract of the clause is as under:

“14(III)(ब)

गोदाम में रखे तेंदूपत्ते के स्कंध, जिसका भुगतान कर दिया गया है परन्तु परिदान नहीं लिया गया है, को संघ के पक्ष में अधिरहित करने।”

- b) Further, the Federation had the right to sell Tendupatta in the joint custody which was paid for as well as which was not paid for to recover the dues of the Federation in terms of Clause 14(III)(स)(एक). To be able to sell the goods to a person other than the applicant and to be able to deliver the Tendupatta to such person, the Federation needed possession of the Tendupatta. Therefore, the Federation did not hand over the custody of the Tendupatta to the applicant. The relevant extract of the clause is as under:

“14(III)(स)(एक)

गोदाम में रखे तेंदूपत्ते का, जिसके लिए देय राशि का भुगतान नहीं किया गया है तथा गोदाम में रखे तेंदूपत्ते के उस स्कंध का जो संघ के पक्ष में शर्त क्रमांक 14(III)(ब) के अधीन अधिरहित किया गया है का विक्रय करने और हानि की वसूली करने.....”

- c) If the Tendupatta stored in the godown, was switched with another lot or any replacement of the lot was made by miscreants, without the knowledge of the applicant, there was no way for the applicant to ascertain this fact from a visual inspection of the goods stored. Therefore, the Federation, to ensure that there was no such claim by the applicant, the Federation gave symbolic custody by providing joint custody.

From the above averments, read with the extract of the agreement between the applicant and the Federation, it is clear that till such time as all the



conditions of the agreement were not complied with the goods were treated to be delivered or sold to the applicant and therefore, the identified goods were kept in the godown allotted by the Federation, under joint lock but control of the Federation.

3.2. Why you are a beneficiary in insurance of the said stock, if the supply is not complete;

3.2.1. At the outset, the applicant wishes to clarify that the applicant was not the beneficiary of the insurance claim of the Tendupatta stored in the godown. The beneficiary of the insurance claim was the Federation. The relevant clause and the reason are explained herein below.

3.2.2. As per the agreement, where the delivery of the Tendupatta was not accepted at the Collection Centre and the payment made for the same, the Tendupatta was stored in the Godown allotted by the Federation. One of the conditions for keeping the Tendupatta in godown was that the applicant was required to obtain insurance of the goods for sum, not less than the amount of dues of the applicant towards the Federation in respect of the Tendupatta stored in the godown. Also, the insurance claim was to be paid to the Federation in case any claim was filed.

3.2.3. The relevant clause for Insurance of the Tendupatta stored in the godown is clause 6(ब)(6). The relevant extract of the clause is as under:

Requirement to obtain insurance:

6(ब)(6)

"क्रेता को गोदाम के अन्दर रखे गए तेंदूपत्ते का बीमा समस्त कारणों से होने वाली संभावित हानि के लिए अनिवार्य रूप से करना होगा।....."

Federation is the beneficiary of the claim:

"6(ब)(6)

.....यदि किसी भी कारण से तेंदूपत्ते की कोई हानि होती है, तो उसकी क्षतिपूर्ति बीमा कम्पनी के द्वारा सीधे संघ को देय होगी और इस प्रकार का प्रावधान प्रबंध संचालक, जिलायूनियन की संतुष्टि के अधीन क्रेता को बीमा पॉलिसी में करना होगा।....."

Precondition for keeping goods in the godown:

"6(ब)(6)

..... यह गोदामिकरण सुविधा की विशिष्ट शर्त है ।....."

3.2.4. From the above discussion it is amply clear that the insurance was obtained in compliance of the terms of the agreement with the Federation and also that the beneficiary of the insurance was the Federation and not us.



- 3.2.5. Further, from the copy of the Insurance Cover Note, it is clear that the insurance is in the name of the MD, MP F E (T & D) Co Op Fed Ltd Mandla. Insurance in the name of the Federation means the Federation has an insurable interest in the goods, which shows that not only the benefit of the insurance but the insurable interest was also that of the Federation.

From the above averments, read with the extract of the agreement between the applicant and the Federation and copy of the Insurance Covernote filed by the applicant, it is clear that the applicant was not the beneficiary of the insurance. The beneficiary of the insurance was the Federation. This fact is further established by the fact that demand letter vide no. क्रमांक / ते.प./19/731 dated 31.05.2019 clearly showed that a sum of Rs. 17787668/- was received by the Federation on account of Insurance Claim by the Federation.

- 3.3. Why rent of the godown, in which said stock is stored, is payable by you;
3.3.1. The applicant was required to take delivery of the Tendupatta from the collection centre. However, in the event that the applicant was not able to take the delivery at the collection centre, it was deemed that the applicant did not want to take delivery from the collection centre. In such case, as per the agreement, the Tendupatta was to be stored in a Godown and the Tendupatta was to be delivered from the Godown instead of the Collection Centre. The storage in godown was in terms of clause 6(अ)(III). The text is as under:

“6(अ)(III) :

क्रेता द्वारा उप कण्डिका (I) के अनुसार देय राशी एवं आवेदन पत्र दिनांक 29.04.2017 तक प्रबंध संचालक जिला यूनियन के कार्यालय में प्रस्तुत न करने पर यह मान लिया जावेगा कि क्रेता संग्रहण केंद्र से तेंदूपत्ता मुक्त नहीं कराना चाहता है एवं तब उसे तेंदूपत्ते का गोदाम से ही निर्धारित रीति से परिदान दिया जावेगा।

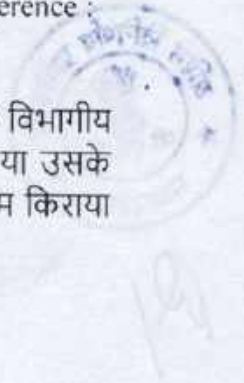
- 3.3.2. This storage in the godown was not free of cost, but attracted a rent of Rs. 4/- per bag per month. This rent and the method of computation of rent was duly provided for in the agreement. In this regard, kindly see Clause 6(ब)(4)(I) of the agreement, extract of which is reproduced hereunder for ready reference :

Rent :

“6(ब)(4)(I)

प्रबंध संचालक, जिला यूनियन द्वारा तेंदूपत्ता रखने हेतु संघ / समिति / विभागीय गोदाम अनुमोदित किये जाने पर क्रेता ऐसे गोदाम के लिए प्रति माह या उसके भाग के लिए रूपये 4/- प्रति वास्तविक बोरा प्रतिमाह की दर से गोदाम किराया भुगतान करेगा।”

Computation of Rent :



"6(ब)(4)(II)

किराये की गणना प्रत्येक माह हेतु उस माह में भंडारित अधिकतम मात्रा के आधार पर की जावेगी एवं यह राशि आगामी माह की 1 तारीख को देय मानी जावेगी।....."

The control over the Tendupatta in the godown was with the Federation in terms of Clause 6(ब)(5). The text of the provision is as under:

"6(ब)(5)

तेंदुपत्ता क्रेता कि अभिरक्षा, देखरेख, पर्यवेक्षण तथा जोखिम पर, लेकिन प्रबंध संचालक जिला यूनियन के नियंत्रण में रखा जाएगा और इस शर्त पर कि गोदाम में संघ का ताला लगाकर अथवा किसी ऐसी अन्य प्रक्रिया, जैसी कि प्रबंध संचालक जिला यूनियन ने आदेशित की हो, के अनुसार अभिगमन था नियंत्रण रखने का पूर्ण अधिकार होगा।"

- 3.3.3. If the applicant did not want to store the goods in the allotted godown, then the applicant had to pay rent computed @ Rs 4/- bag per month for a period of 8 months and then store the goods in another godown under the double. Lock. In this regard, kindly see para 6(ब), the relevant extract of which is as under:

"6(ब)

..... परन्तु यदि क्रेता उस आदेशित गोदाम में तेंदू पते का भण्डारण करने का इच्छुक नहीं है तो वह प्रबंध संचालक जिला यूनियन द्वारा आदेशित संघ / समिति / विभागीय गोदाम की क्रेता को आवंटित भण्डारण क्षमता के आधार पर 4/- रूपए प्रति वास्तविक बोरा प्रति माह 8 माह का किराया अग्रिम में भुगतान कर इस बाध्यता से मुक्त हो सकेगा।....."

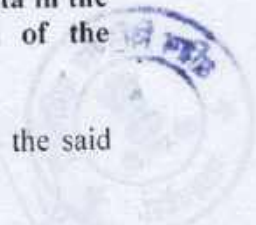
From the above averments, read with the extract of the agreement between the applicant and the Federation, it is clear that facility to pay for the Tendupatta at a later date was allowed by the Federation on the condition that the Tendupatta in the meantime shall be stored under double lock and under the control of the Federation, after due insurance of the Tendupatta.

- 3.4. Why interest is payable by you for delay in payment pertaining to the said stock, if the supply is not complete.

- 3.4.1. A contract for sale of goods earlier formed part of the Indian Contract Act, 1872 vide Section 76 to Section 123 of the Act. Thereafter, it was repealed and a separate Act named Sale of Goods Act, 1930 came into existence. A contract may be verbal or written and in case of dispute, the terms of the agreement are tested against the provisions of the sale of goods act for their application and interpretation of the terms. Where the contract is verbal, the



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conduct of the parties, the common practice in the trade, legality of the actions etcetera are taken into consideration, while in case of a documented agreement, the terms of the agreement become the foundation for the interpretation of the terms of the agreement, subject to they being legal.

3.4.2. In this contract between the Federation and the Applicant for sale of Tendupatta, special provisions, not generally found in sale agreements have been provided for. These special provisions are aimed at protecting the financial interests of the Federation. Therefore, once the agreement is entered into by the applicant, the agreed amount is to be paid by the applicant even if he does not buy the Tendupatta eventually. Under the terms of the agreement, the matter payment of the Godown Charges, Labour Charges, interest on delayed payment all became part of the amount due to be received from the applicant. The agreement clearly states that if the applicant does not pay for the Tendupatta, the Tendupatta shall be sold to another person and the sale value of such sale shall be adjusted against the amount due from the applicant. If such sale amount falls short of the amount receivable from the applicant, then it shall be recovered as arrears of Land Revenue [refer to clause 14(III) of the agreement].

3.4.3. The agreement clearly stated that in case of delay in payment of the installments, interest shall be paid and only upon payment of the interest the goods shall be delivered to the applicant. Kindly see para 6(ब), the relevant extract of which is as under:

“6(ब)(1).....

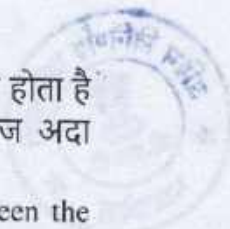
क्रेताद्वारा किसी किश्त की देय तिथि के पूर्व उस किश्त की नीचे दर्शाये अनुसार आंशिक राशि एवम उस पर देय समस्त कर आदि जमाकर जमा की गई राशि के अनुपात में पत्ते का परिदान प्राप्त किया जा सकेगा।”

3.4.4. The agreement also stated that in case of destruction of goods, if the insurance claim was received after the due date for payment of the goods, interest on such amount for such period shall also be payable by the applicant. t of which is as under:

“6(ब)(6).....

यदि किश्तों की निश्चित तिथि के पश्चात क्षतिपूर्ति भुगतान या उसका भाग प्राप्त होता है तो क्रेता ऐसी विलंबित राशि पर 0.040 प्रतिशत प्रतिदिन की दर से ब्याज अदा करेगा।”

From the above averments, read with the extract of the agreement between the applicant and the Federation, it is amply clear that the payment of interest was not dependent on the sale being made by the Federation. Even if the sale was not made to the applicant, the applicant was bound in terms of the agreement to pay



interest for delay in payment, which could be for the installment amount, godown charges or insurance claim.”

7. Admissibility of the application:

- 7.1. The applicant wishes to question whether any particular thing done by the applicant, i.e. taking joint custody, with respect to any goods, i.e. tendupatta, amounts to or results in a supply of goods, i.e. the tendupatta taken in joint custody.
- 7.2. Further, the applicant also wishes to know whether in the given circumstances of the case, where the goods are destroyed by fire before being delivered under an agreement to sell, can there be “Supply” within the meaning of Section 7 of the GST Act after the destruction of the goods by fire?
- 7.3. There can be no dispute about submission of the applicant regarding eligibility of an applicant to raise a question for advance ruling ‘in relation to the supply’ made by him. But, the question raised by applicant is ‘in relation to the supply’ made by the Federation, of the goods which have been kept in joint custody, with joint insurance, and for storage of which godown rent has been charged by the Federation, and for balance amount of which interest has also been charged by the Federation from the applicant.
- 7.4. It has to be examined whether the question - ‘Whether the transaction of supply of impugned goods by the Federation is completed or not’ is a question to be decided on the application of the Federation only or whether it can be decided on the application of the applicant.
- 7.5. Also, it is to be considered whether in a case where the supplier *i.e.* the Federation themselves have treated the disputed transaction as supply, then is it open for the Applicant to question whether there is supply.
- 7.6. Advance Ruling under the Act is defined in Section 95(a) and is as under:
“(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 [or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.”
- 7.7. As per the definition, the ingredients of an Advance Ruling are:
- It is a decision on matters or on questions specified in Section 97(2);
 - The matter or the question is in relation to supply of goods or services by the applicant;
 - The supply may be one that has already been undertaken or proposed to be undertaken.
- 7.8. The question should thus be one specified u/s 97(2) and should be in relation to supply of goods or services being undertaken or proposed to be undertaken by the applicant.



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Apparently, this seems to allude that the question should be in respect of goods / services being supplied by the applicant.

- 7.9. However, when the questions specified in Section 97(2) are perused, we come across question about admissibility of input tax credit of tax paid or deemed to have been paid, which is covered u/s 97(2)(d), further question u/s 97(2)(e) is about determination of the liability to pay tax on any goods or services or both and 97(2)(f) is about whether applicant is required to be registered. Question in 97(2)(d) is purely related to an inward supply while the questions 97(2)(e) and (f) may be with respect to an inward supply covered under RCM too.
- 7.10. The definition states that the question should be "*in relation to supply*" and not about supply. There is nothing in the text of the section that states that the question can only be about supply. Once this assumed pre-condition is done away with, it becomes clear how subject matter of the questions listed in Section 97(2) get covered under an Advance Ruling as per Section 95(a). The definition of Advance Ruling contains the term "in relation to", which enlarges the scope of a provision.
- 7.11. Clearly the provisions point towards the fact that an Application for Advance Ruling is not restricted only to goods or services being supplied, but it is open to everybody, so long as it is in relation to supply of goods and services by the applicant and is covered u/s 97(2).
- 7.12. The definition states that the question should be in relation to supply and not about supply. There is nothing in the text of the section that states that the question can only be about supply. Once this assumed pre-condition is done away with, it becomes clear how subject matter of the questions listed in Section 97(2) get covered under an Advance Ruling as per Section 95(a). The definition of Advance Ruling contains the term "in relation to", which enlarges the scope of a provision.
- 7.13. The Rule of Harmonious Construction is used to avoid any inconsistency and repugnancy within a section or between a section and other parts of a statute. The rule follows a very simple premise that every statute has a purpose and intent as per law, and should be read as a whole. The interpretation which is consistent with all the provisions and makes the enactment consistent shall prevail. The doctrine follows a settled rule that an interpretation that results in injustice, hardship, inconvenience and anomaly should be avoided. The interpretation with the closest conformity to justice must be picked. The Supreme Court laid down 5 main principles of the 'Doctrine of Harmonious Construction'-
- The courts must avoid a 'head of clash' of contradictory provisions and they must construe the contradictory provisions so as to harmonize them.^{vi}
 - When it is not possible to completely reconcile the differences in contradictory provisions, the court must interpret them in such a way so as to give effect to both provisions as much as possible.



- Courts must keep in mind that the interpretation which reduces one provision to a useless standing is against the essence of 'Harmonious Construction'.
- To harmonize the provisions is not to render them fruitless or destroy any statutory provision.
- The provision of one section cannot be used to render useless the other provision, unless the court, despite all its efforts, finds a way to reconcile the differences.

7.14. Again, the act has defined the terms "*outward supply*" and "*inward supply*" which encompass definition of supply given in the Act. A joint reading of the provisions of Section 95(a) and 97(2), interpreted following the principle of Harmonious Construction, it is clear that an Advance Ruling may be about an inward supply also, provided it is in relation to an outward supply made or proposed to be made.

7.15. In this case, the applicant has taken custody of Tendupatta jointly with the seller of the Tendupatta, which is to be held in such joint custody till such time as the payment for the Tendupatta is not made or till the end of the period of contract, along with interest in case of delay in payment beyond the stipulated time. The query of the applicant is whether the act of taking joint custody of Tendupatta results in a supply of Tendupatta. In terms of section 97(2)(g), the applicant wishes to question whether:

- *any particular thing done by the applicant, i.e. taking joint custody,*
- *with respect to any goods, i.e. tendupatta,*
- *amounts to or results in a supply of goods, i.e. the tendupatta taken in joint custody.*

Since the applicant is engaged in the business of supply of Tendupatta therefore, the query is in relation to supply made by him.

7.16. Any Advance Ruling that is sought is for the correct compliance under law and is aimed at avoidance of the disputes. Once it is clear that inward supply is also covered under the term supply for the purpose of an Advance Ruling, the transaction of inward receipt of goods or services is open for the recipient to include in an Advance Ruling Application. Further, interpretation of the supplier is not determinative of the correct position of law. Correct position of law is arrived at by interpreting the statute. Thus, the treatment of the sale of Tedupatta by the Federation as supply does not preclude the applicant from filing this application and raising the query in this regard.

7.17. Further, the applicant has raised a query regarding supply of goods, which are destroyed before their delivery under an agreement to sell. This query is also squarely covered under section 97(2)(g) of the Act, being related to supply of goods.

7.18. In light of the above we are of the opinion that the question regarding the act of supply of rate of GST applicable on the inward supply of the applicant is covered under the definition of Advance Ruling as per section 95(a) of the GST Act and the application is therefore admissible.



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8. Discussing and findings:

8.1. We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the jurisdictional officer.

8.2. Admittedly, in one instance, the Tendupatta was destroyed in fire in the Godown under the joint lock and key of the applicant and the Federation. The applicant has provided copy of letter no. क्रमांक / ते.प./19/731 dated 31.05.2019 of the Managing Director, District Forest Produce Co-operative Union, West Mandla addressed to the applicant where GST has been demanded on the value of the third and fourth installments of Lot No. 1777 of the jointly held Tendupatta destroyed in the godown.

On the other hand, it is the contention of the applicant that supply of Tendupatta relating to the 3rd and 4th installment was not made as per the provisions of the GST Act and therefore GST is not payable on the value of the jointly held goods destroyed in fire.

8.3. The admissibility of the application has already been discussed and accepted in para 7 of this Ruling and is not being discussed again.

8.4. The applicant has raised two questions and we first take up the question regarding acceptance of joint custody resulting in supply of goods under the GST Act. The query is whether mere acceptance of joint custody of the goods without the rights and privileges of ownership of the goods amounts to "Supply" within the meaning of Section 7 of the GST Act?

8.5. As per the applicant he does not have the right to take sole custody of goods on account of non-performance of a covenant of the agreement between the buyer and seller. The joint custody is only till the completion of the agreement period. If payment is not made till then, the applicant loses all rights under the agreement. It has to be therefore ascertained whether supply has happened upon granting joint custody of the goods to the applicant.

8.6. The definition of supply under the GST act is an inclusive definition. It defines supply as including all forms of supply or goods. Supply is an activity, including inactivity in case of supply of service, as per Schedule II to the GST Act. Supply presupposes a supplier, defined in section 2(105), a recipient, defined in section 2(93), consideration defined in section 2(31) and an activity. The activities that have been treated to be a supply in the definition are sale, transfer, barter, exchange, licence, rental, lease or disposal. The dictionary meaning of Supply is to make (something needed or wanted) available to someone. This definition has only the consideration limb missing in it. It may thus be inferred that supply, so far as goods are concerned involves movement of goods or the transfer of possession of goods from one person to another. Supply of goods cannot happen without the movement of possession of the goods from one person to another. While a person has goods in his possession, he cannot be said to have supplied the goods to another.



8.7. Under the GST Act there are provisions for ascertaining Time of Supply as well as the Place of Supply, which also corroborate that in supply of goods, there has to be movement of possession from one person to another. The provision of time of supply of goods, under section 12 of the GST Act states that time of supply of goods shall be the date of issue of invoice and section 31 states that invoice is to be issued before the removal of the goods for supply, in case where movement of goods is involved. Where movement of goods is not involved, then delivery of goods or making available for delivery shall be the time of supply. Under the IGST Act, place of supply in case of movement of goods, there is reference to delivery of the goods for ascertaining the place of supply. Thus, the provisions of the GST act, in the matter of supply of goods, envisages delivery of the goods, whether physically or constructively by delivery of document of title to the goods.

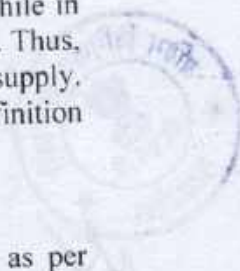
8.8. The definition of 'Sale' given in Sale of Goods Act and the term sale is not defined under the GST Laws. Therefore, wherever the term sale comes, resort is to be had of the definition of Sale given in the Sale of Goods Act. However, it has to be seen whether the provisions of Sale of Goods Act shall apply in this case. The provisions of the GST Act are to be looked into and are to be considered *vis-a-vis* the facts of the applicant's case.

8.9. The various clauses of 'Agreement for Sale', as referred by applicant in the Summary of their Written Submission, can not prevail over the provisions of the GST Act, though they can be look into to decide whether there is a supply as per provisions of GST Act.

8.10. It is also a point for consideration that the definition of supply u/s 7 of GST Act is 'inclusive', and it includes "all forms of supply of goods such as sale, transfer, barter, exchange, license, rental, lease or disposal made or **agreed to be made**". The highlighted portion of the provision poses a serious problem if it is to be interpreted that mere agreement to sale, transfer, barter, exchange, license, rental, lease or disposal shall give rise to supply. This provision seeks to include instances where consideration has been received under an agreement to sale, transfer, barter, exchange, license, rental, lease or disposal. In case of goods, advance for supply has been specifically exempted, while in case of supply of service, advance for supply is taxed upon receipt of the advance. Thus, this phrase "agreed to be made" does not mean "agreement sell" is also a supply. Agreement to sell becomes a supply only upon the sale of the goods, since the definition of Supply includes Sale.

8.11. The Applicant stated during time of personal hearing that—
 "3.5since the transaction relates to future goods, as per Section 6 of the Sale of Goods Act, 1930, the agreement is in the nature of an agreement to sell."

In the opinion of this Authority, to decide whether there is supply of the goods kept in warehouse in joint custody, it is not relevant that the 'Agreement is in the nature of an agreement to sell'. However, in this case since the subject matter of



the sale was destroyed before the agreement to sell culminated into sale, this dispute has come about.

- 8.12. In Para 6.25(3.6) of the written submission it is stated that –
 “As per the terms of the agreement, even though the goods were in joint custody, the delivery of the goods was not given to the applicant since in case of joint custody, the delivery was to be given from the Godown”.

In the opinion of this Authority, to decide whether there is supply of the goods kept in warehouse in joint custody, it is not relevant that ‘the delivery was to be given from the Godown’ or otherwise. However, the agreement has stated different points of delivery of the goods depending on different conditions. Therefore, it becomes important to see at which point the delivery of the goods is given to the applicant to complete the transaction and convert the Agreement to Sell into a Sale. In this case, the payment was not made by the applicant at the point of collection and therefore, delivery was not given and the goods were stored in the Godown. In a case, the delivery was to be given from a certain place, the situs of such sale would be the place such ‘right to use’ is transferred. However, in case of oral or implied transfer of right to use (where the goods are not ascertained goods), the situs would be where location where the property in goods is transferred. In this case the property in goods would have been transferred upon payment of the full consideration and therefore, upon delivery at the godown, it would have been the situs.

- 8.13. The delivery of the said goods stored in warehouse is not given to the applicant, and that is relevant to decide whether the supply of the said goods is completed or not. There can be cases where there is no actual delivery of goods, but despite that there is supply of goods. Instead of actual delivery, there can be constructive delivery, as is in case of documents of the goods sent through Bank. In that case, the documents are delivered by the Bank to the purchaser on making payment to the bank by the purchaser. If this transaction is effected by the supplier on 28th March and the documents are received by the purchaser after 31st March. In that case also the sale is to be treated as made on 28th March only, and not after 31st March. Similarly, in case of goods supplied and retained by the supplier himself for any further process, though there is no actual delivery, but there is definitely constructive delivery, and the transaction of supply of goods is treated as completed.

However, this is a case of the Agreement to Sell, which could not be completed on account of destruction of the goods. The delivery was not given to the applicant till the destruction of the goods is not in dispute, therefore, it becomes an important consideration.

- 8.14. As per Para 6.25(3.7) of personal hearing the Applicant’s submission reads as under:



"The delivery of the goods was to be given only upon the payment of the amount of the due installment along with interest for the delay in payment from the stipulated date, if any."

8.15. The above Para itself indicate that the transaction of supply was not complete, since the installment due and the interest computed for the delay in payment from the due date was not paid.

8.16. The term "sale" amounts to supply as per the definition of Supply. In this case, the nature of supply is a transaction between the applicant and the federation which relates to sale of goods. Therefore, to ascertain whether supply has taken place, we have to ascertain whether sale has taken place. Accordingly, it is necessary that the transaction be analyzed in light of the provisions of the Sale of Goods Act, 1930.

8.17. A perusal of the agreement between the Federation and the Applicant shows that the agreement contains many conditions that are to be completed before the transfer of the property in the goods takes place from the Federation to the Applicant. In the case of the purchase of Tendupatta, the goods in question (that is, Tendupatta fit for use for making bidi) were not in existence at the point of time when the Federation and the applicant (Successful bidder) entered into the contract for the purchase of Tendupatta. The sale of tendupatta was subject to the acceptance of the tendupatta for its quality. Also, the sale was to be made at a future point of time and accepted for its quality. This fact is duly narrated in the Agreement at para 5(IV), the relevant text of which is as under:

"(IV) संग्रहण के उपरांत क्रेता के प्रतिनिधि को समस्त संग्रहित तेंदू पत्ता संग्रहण के 48 घंटे के भीतर हरी अवस्था में परिदान दिया जायेगा।....."

8.18. At the time of the contract, the goods were not in existence and therefore, the goods in question were Future Goods. The sale of future goods is governed by Section 6 of the Sale of Goods Act, 1930. Section 6(3) states that present sale of future goods is an agreement to sell goods.

8.19. The delivery of the Tendupatta was conditional on the payment of the due installment and during the pendency of the dues, the Tendupatta was to be kept under Joint Custody of the federation and the noticee. Also, in case of delay in payment of the installment, the installment was to be paid along with the interest for the period of delay in the payment of the installment. The relevant terms are given in para 6(ब)(1) of the contract. It is clear from the clause of the agreement that the delivery of the goods was not made to be made to the applicant unless the whole of the amount was paid and in case of delay in payment, interest was paid along with the sum due. It follows from the corollary that storage of goods in the Joint Custody would not amount to delivery of goods to the applicant (Successful bidder). Since the installments due were not paid, there is no question of delivery of the goods to the applicant (Successful Bidder).

8.20. Section 23 of the Sale of Goods Act, 1930 states that, the property in goods, in case of future goods, passes to the bidder when they are unconditionally appropriated to



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the contract. Since the future goods are not appropriated to the contract unless the due amount is paid in full, the property in the goods did not pass to the applicant as per the terms of the contract between the Federation and the applicant.

8.21. The applicant has furnished copy of the Insurance Cover Note of the Insurance of the Tendupatta that was held in the joint custody by the applicant and the federation. From a perusal of the agreement and the cover note, it is seen that the not only the federation is the beneficiary of the insurance claim, the policy is also in the name of the Federation.

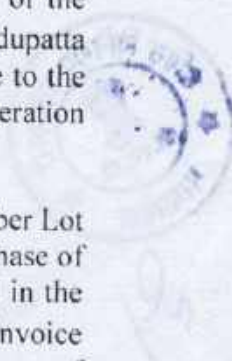
The Federation may have become the beneficiary of the insurance claim even after having transferred the property in goods to the applicant, but for obtaining insurance policy in joint name, it is essential that the person entering into the contract with the Insurer should have **insurable interest** in the goods. Until and unless the risk is with the Federation, the Federation would not have insurable interest in the goods after sale. The fact that the federation has obtained insurance in its name along with the applicant, points to the fact that the risk in goods lay with the Federation. Section 26 of the Sale of Goods Act, 1930, states that the risk in goods passes with the transfer of the property in goods and thus an inference is drawn that the transfer of property in Tendupatta had not happened till the date of the fire in the godown, since the insurance policy was in the joint name of the Federation and the applicant.

8.22. It is therefore clear that neither the risk in the goods nor the property in the goods had passed to the applicant as on the date of the fire. Clearly therefore, the goods were also not delivered to the Applicant.

8.23. Apart from the points of law, which show that the risk in goods and the property in goods had not passed to the applicant the terms of the agreement and the conduct of the parties to the agreement also show that the property in goods and the risk thereof was with the Federation and not the applicant. Also that the Joint Custody did not amount to the delivery of the goods to the applicant.

8.24. As per the agreement that the Federation had entered into with the applicant, the Federation was required to issue a Certificate of Sale to the applicant in terms of the मध्यप्रदेश तेंदूपत्ता (ब्यापार चिनयमन) नियमावली, 1966. In the case of the Tendupatta destroyed by fire in the godown, the Federation had not issued Certificate of Sale to the applicant. This conduct of the Federation is determinative of the fact that the Federation did not treat Joint Custody of the Tendupatta as sale.

8.25. As per the agreement of the applicant with the Federation, Tendupatta number Lot No. 1777 was to be purchased from Ghorkheda Society. The payment for the purchase of the lot was to be made in four installments, the date of which was duly indicated in the agreement at para 6(ब)(1) of the agreement. The applicant has furnished copy of Invoice raised by the Federation and Release letter for Delivery of Tendupatta and issue of Transport Permit. Invoice No. JBWML0024 dated 30.11.2017 is for the sale of 1st



Instalment of Lot No. 1777 of Tendupatta. Further, the Release Letter for Delivery of Tendupatta and Transport Permit Letter dated 30.11.2017 states that the Delivery is being given subsequent to payment of the first instalment. The Delivery Note also contains the particulars of the payment made for the first instalment.

Again, Invoice No. JBWML0041 dated 30.01.2018 is for the sale of the IInd installment of the Lot No. 1777. The Release Letter for Delivery of Tendupatta and Transport Permit Letter dated 30.01.2018 states that the Delivery is being given subsequent to payment of the IInd instalment. The Delivery Note also contains the particulars of the payment made for the IInd instalment.

In the case of the 3rd instalment of the lot, invoice has not been issued. Also, letter for delivery of the 3rd Instalment of Lot No. 1777 has also not been issued. It is therefore clear that the invoice was issued along with the delivery of tendupatta upon the payment of the amount due as per the instalment. The fact that the invoice was not issued indicates that the sale had not been made as per the Federation and also delivery was given to the applicant.

8.26. Conduct of the parties to a transaction, prior to dispute between the parties is an important aide to interpretation of the covenants of agreement. The conduct of the Federation in not issuing Certificate of Sale, Invoice and Delivery Note for the 3rd installment of the Lot No. 1777 that was burnt under Joint Custody clearly shows that as per the agreement of the Federation and the Applicant, the delivery of the goods and the issue of invoice for sale was only after the payment of the installment due and that goods were considered to be sold on after the receipt of the payment.

8.27. Destruction of goods in case of an agreement to sell plays a pivotal role in determination of the culmination of the transaction. As per section 8 of the Sale of Goods Act, 1930, if ascertained goods are destroyed before passing of the risk in the goods, then contract under which the goods perished before sale but after agreement sell becomes an avoidable transaction. The agreement entered into by the applicant with the Federation after the goods were destroyed in fire, was merely an "avoidable agreement to sell" and not sale. Further, in the case of the goods that were destroyed in fire, neither delivery was given nor invoice for sale was issued, which shows by the conduct of the parties that there was no sale per se.

8.28. Also, since the contract was to culminate upon compliance of numerous conditions and also after passage of certain time, as also the contract being that of future goods, the nature of contract was an agreement to sell and therefore upon destruction of the subject matter of sale, i.e., the Tendupatta, the agreement became an avoidable agreement to sell;

8.29. In this case, the subject matter of supply does not exist. Conditions of a contract cannot go beyond the law of the land and any stipulation in a contract that there shall be sale of goods under an agreement to sell even when the goods are destroyed, in



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contradiction to Section 8 of the Sale of Goods Act, 1930 shall not hold much water in the eyes of law.

8.30. It is also worthwhile to note that the federation, in case of non-compliance with the conditions of the agreement of the Federation and the applicant, has the right to sell the goods lying in the joint-custody. This shows that the goods lying in the joint custody are merely symbolic and actual custody of the Tendupatta was with the Federation. In this regard, Clause 14(III) of the agreement states as under:

(III) करारकीसमाप्तिपर संघ, निम्नलिखितकेलिएहकदारहोगा -

(अ)

(ब)

गोदाममेंरखेतेंदूपत्तेकेस्कंध, जिसकाभुगतानकरदियागयाहैपरन्तुपरिदान नहींलियागयाहोकोसंघकेपक्षमेंअधिहरितकरने।

As per the agreement, the custody of the Tendupatta, for which was payment was made by the applicant, was also within the powers of the Federation to seize. The custody therefore, for all practical purposes, was with the Federation.

8.31. Where in an agreement to sell specific goods, if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer answer to their description in the agreement, the agreement shall become void, provided the goods are perished before the ownership and risk passes to the buyer. This rule is based on the ground of impossibility of performance.

8.32. From the above discussion, it may be concluded that :

- upon acceptance of the quality of the Tendupatta, they were kept under Joint Custody of the Federation and the applicant. However, as per the terms of the agreement between the parties, the delivery of the Tendupatta was to be given only upon payment of the installment due. In case of delay in payment of the instalment, the amount of interest for the period of default was also to be paid before the delivery of the Tendupatta. Once the delivery was given, invoice was also concurrently issued for the value of the goods delivered;
- Since the sale was that of future goods, in the absence of the appropriation of the goods to the contract, the property in the goods did not pass to the applicant prior to the sale. Therefore, sale of Tendupatta in joint custody of the Federation and the applicant did not take place prior to the destruction of the Tendupatta.

8.33. Principles of interpretation of Statutes, Deeds and Documents refer to an Absurdity Limit, which states that a statute **cannot** be **interpreted** literally if it **would lead to an absurd result**. Now, coming to the agreement of the applicant with the Federation, in case of non-payment of the dues, the Federation would sell the goods to another person and the sale proceeds of such sale shall be adjusted from the dues of the applicant. Now in such case, if the goods are deemed to have already been supplied to the applicant vide joint custody, the second sale would also be taxed, being supply in terms of the GST Act. Therefore, such an interpretation would result in the same goods being sold to two different persons. This would be an absurd result and therefore such an interpretation would be erroneous in the eyes of the law.



8.34. The second question of the applicant, is whether in the given circumstances of the case, where the goods are destroyed by fire before being delivered under an agreement to sell, can there be "Supply" within the meaning of Section 7 of the GST Act after the destruction of the goods by fire.

8.35. "Supply" within the meaning of Section 7 of the GST Act can only be of goods that are in existence. Although a contract may be entered into for supply of future goods and consideration also be received for such supply of future goods, non-existent or future goods cannot be supplied in terms of Section 7 of the GST Act. In this case, the goods are destroyed by fire. There cannot be any transaction in respect of such non-existent goods after their destruction that would amount to supply.

9. **Order u/s 98 of the CGST Act, 2017 and MPGST Act, 2017:**

9.1. Considering the Argument and submission by the Applicant in respect of the First Question raised before this authority, it is ruled that in the given circumstances, taking joint custody of Tendupatta by the applicant shall not amount to supply of Tendupatta to the applicant if the invoice of the said transection is not issued.

9.2. Goods, subject matter of an agreement to sell, that are destroyed before sale, cannot form subject matter of "Supply" within the meaning of Section 7 of the GST Act *after* their destruction.

9.3. The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

(Manoj Kumar Choubey)
(Member)

(Virendra Kumar Jain)
(Member)

Copy to:- 14/2020/AAR/R-28/08

INDORE Dated 17/06/2021

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Bhopal
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि

