

PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING

Order No. 03/AAAR/Bansal Industries/2023/ Dated: 20.03.2023

336-38

Present:

1. Sh. Rajesh Puri, Chief Commissioner, IRS (C&IT), CGST Commissionerate, Chandigarh Zone, Chandigarh;
2. Sh. Kamal Kishor Yadav, IAS, Commissioner of State Tax, Punjab

Name and Address of appellant	M/s Bansal Industries, Old Fazilka Road, Abohar, Punjab.
GSTIN	03AADFB0920D1ZF
Date of Application	12-12-2022
Jurisdictional Authority-Centre	(LUDHIANA),(FEROZEPUR),(ABOHAR)
Jurisdictional authority-State	(Punjab),(Ferozepur),(Fazilka),(Fazilka-Ward No.3)
Represented By	Sh. Rishab Singla, Advocate
Date of Personal Hearing	09-02-2023
Order of Authority of Advance Ruling	AAR/GST/PB/30 dated 10.11.2022 issued by the Punjab Authority for Advance Ruling, Punjab.

PROCEEDINGS

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax Act, 2017, (hereinafter referred to as, "CGST Act" and "PGST Act") are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the PGST Act.

A. Facts of the Case:

M/s Bansal Industries, as detailed in the table above and hereinafter referred to as 'appellant' is a partnership firm engaged in the business of ginning and pressing of

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cotton as well as crushing of oil seeds (Cotton Seeds obtained in the ginning of raw cotton (narma)). The appellant had requested an advance ruling seeking to know whether Purchase of raw cotton from Kacha Arhtiya, who is a registered taxpayer, constitutes a purchase from agriculturist so as to attract liability under Reverse Charge Mechanism in view of sub-section (3) of section 9 of CGST/PGST Act,2017.

B. Order of the Authority for Advance Ruling:

Relevant extract of the order No.AAR/GST/PB/30 dated 10th of November,2022 issued by the Punjab Authority for Advance Ruling (for brevity, "AAR")is reproduced hereunder:

"The applicant is liable to pay GST under reverse charge basis being a registered person in terms of Notification no. 13/2017-Central Tax(Rate) dated 28th June,2017 as amended vide notification no. 43/2017-Central Tax(Rate) dated 14th November,2017 and not the Kacha Arhtiya."

C. Submission of the appellant:

- (i) The appellant herein purchases raw cotton from Kacha Arhtiyas, who issues Form-I (under Agricultural Produce Marketing Committee Act (APMC Act)) on behalf of the agriculturists. Form-I is issued in the name of the Kacha Arhtiya detailing wherein the quantity of raw cotton (Narma) and the incidental charges. The payment is also made to Kacha Arhtiya in his account through banking channels. Kacha Arhtiya issues Form-J to the agriculturist and also transfers the amount to agriculturist after deducting its commission.
- (ii) From above it is clear that Form J is issued to the agriculturist and Form I to the purchaser. Kacha Arhtiya does not purchase goods but is only acting as an agent of the farmer and does not engage in the purchase of raw cotton. Kacha Arhtiya is getting the raw cotton cleaned, packaging, weighing, sewing of bags etc. and the amounts are indicated in Form-I.
- (iii) The appellant has contended that a Kacha Arhtiya is not an agriculturist within the meaning of section 2(7) of the CGST Act,2017 and therefore, is not covered under the notification no. 43/2017-Central Tax(Rate) dated 14th November,2017. It was contended that the Kacha Arhtiya is an agent of the agriculturist within the scope of circular No. 57/31/2018 dated 04th of



September, 2018 and is therefore, the recipient of goods from the agriculturist and liable to pay GST under reverse charge mechanism.

- (iv) On the date of personal hearing i.e. 09th of February, 2023, Mr Rishab Singla, Advocate, appeared on the behalf of the appellant and reiterated the facts as illustrated above. On being asked, whether Kacha Arhtiya or the farmer is raising any invoice on the appellant to which he replied that there is no separate invoice being raised by the Kacha Arhtiya or the farmer but the bill of Kacha Arhtiya is itself an invoice.
- (v) The cotton is eventually purchased by the Kacha Arhtiya and payment is made to the farmer. The advocate submitted that Kacha Arhtiya is an agent of farmer. He pleaded that similar dispute had come up before the Appellate Authority for Advance Ruling, Haryana in the case of M/s Bhaktawar Mal Kamra and Sons and the said authority vide order dated 30th of August, 2018 had held that the commission agent is liable to be registered under the CGST Act, 2017.
- (vi) The appellate authority desired to know as to whether farmer advises Kacha Arhtiya to sell the cotton not below a particular price, for which the advocate replied that the farmer is not present during the bidding process and Kacha Arhtiya sells the goods as per the prevailing market prices.

D. Discussion and Findings:

1. The primary issue that emerges from the appeal filed by the appellant is regarding the interpretation and the applicability of the Notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017 where the raw cotton (narma) is being procured by the appellant from the Kacha Arhtiya. The question to be answered is who shall be liable to pay tax through Reverse Charge Mechanism (for brevity, "RCM") where the raw cotton is being supplied by the farmer through the Kacha Arhtiya to the appellant.
2. It is pertinent to mention here that the AAR in its order has given reference to the Notification No. 13/2017-Central Tax(Rate) dated 28th June, 2017 as amended vide notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017 which is not the correct notification for the purpose of issue under consideration. The Notification No. 13/2017-Central Tax(Rate) dated



28th June,2017 was issued for notifying the services that would be subject to RCM under sub-section (3) of section 9 of the CGST Act. The Notification No. 4/2017-Central Tax(Rate) dated 28th June,2017 was issued for notifying the goods that would be subject to RCM under sub-section (3) of section 9 of the CGST Act. The said notification was further amended by Notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017 which is germane to the issue under consideration.

3. Before going into the legal aspects of the case, it would be useful if one goes into the basic work being carried out by the kaccha Arhtiya. The appellant themselves have accepted that kaccha Arhtiya acts as an agent of the agriculturist and the appellant procures raw cotton from the kaccha Arhtiya. From the Form I and Form J issued by the Kacha Arhtiya, it is evident that he charges remuneration under various heads namely, commission, brokerage, dressing, cleaning, unloading, palledari, filling charges and other charges. From the heads of remuneration, it is clear that the Kacha Arhtiyais charging commission for the services rendered by him to the agriculturist, loading/unloading, cleaning of goods, bag sewing charges etc. It is a commonly known fact that the Kaccha Arhtiya receives cotton from the agriculturist, stores it, cleans it, fills the produce in the bag and then sells it by way of auction. So, it is clear that Kacha Arhtiya is carrying out various activities for selling the goods by way of auctioning it.
4. In order to comprehend the issue under consideration it would be pertinent to reproduce the contentious entry of the said notification so that a clarity can be developed regarding the identification of the person liable to pay tax on RCM.

<i>S. No.</i>	<i>Tariff item, sub-heading, heading or Chapter</i>	<i>Description of supply of Goods</i>	<i>Supplier of goods</i>	<i>Recipient of supply</i>
4A	5201	Raw Cotton	Agriculturist	Any registered Person

5. Before delving into the discussion on the matter, it is noted that the said entry was inserted in the Notification No. 4/2017-Central Tax(Rate) dated 28th

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June, 2017 only with effect from 15th of November, 2017 which implies that the transactions effected before the said date were not falling within the purview of the said entry.

6. Now, looking at the said entry there are certain points that are required to be considered in order to have a comprehensive view of the said entry as well as the issue under consideration. The amplitude of said entry is limited to the **"Raw Cotton"** where the supplier of goods is the **"Agriculturist"** and the recipient of supply is **"any registered person"**. So, a combined reading of the said entry implies that supply of raw cotton by an agriculturist to any registered person shall be subject to RCM with effect from 15th of November, 2017.
7. The expression, **"supplier"**, **"Agriculturist"**, **"recipient"** and **"registered person"** have been defined in the CGST Act and it would be useful if the same are reproduced here for reference.
8. As per clause (105) of section 2 of the CGST Act, *"supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.* The important point to be noted here is that an agent acting on behalf of the supplier in relation to goods or services or both supplied is also covered within the ambit of supplier. So, the ambit of supplier has been extended to bring the **"Agent"** within the cover of supplier provided he/she is acting on behalf of the supplier in relation to relation to goods or services or both supplied.
9. Further, as per Clause (7) of section 2 of the CGST Act *"agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land-*
 - (a) *by own labour, or*
 - (b) *by the labour of family, or*
 - (c) *by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.*



So, the definition of an agriculturist is a functional definition which is entirely focussed on the activity of undertaking of cultivation of land which may be carried out by the deployment of own labour or labour of the family or by hired labour.

10. As per Clause (93) of section 2 of the CGST Act, "recipient" of supply of goods or services or both, *means-*

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

11. The point to be noted here is that the definition of recipient is primarily attributed to the payment of consideration and the person who is liable to pay such consideration. Where the element of consideration does not come into play, the definition ventures into the aspect of identification of the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available. In the case of services, the same is effected by of identification of the person to whom the services have been rendered. Furthermore, the definition also brings the “**agent**” within the ambit of recipient where he/she is acting on the behalf of the recipient in relation to the goods or services supplied.

12. As per clause (94) of section 2 of the CGST Act, “**registered person**” means a person who is registered under section 25 but does not include a person having a Unique Identity Number. So any person who has obtained registration under section 25 of the CGST Act shall be covered by the said definition.

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13. So, with the definition of various expressions delineated in the said entry being reproduced and comprehended, it is now opportune to look at the nature of transaction being effected by the appellant in order to determine whether the same falls within the ambit of the entry No. 4A of the Notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017.
14. As submitted by the appellant, the appellant purchases raw cotton from Kacha Arhtiyas and the payment is also made to Kacha Arhtiya in his account through banking channels. Thereafter, as per the submission of the appellant, the Kacha Arhtiya transfers the amount to agriculturist after deducting its commission. Since the element of commission has been identified by the appellant in the said transaction which flows from the farmer to the Kacha Arhtiya, the question of kacha arhtiya as an agent of the farmer or the agriculturist needs to be looked into. This is also important for determination of the supplier and recipient in the transaction as it has been detailed above that both the definitions of **“supplier”** and **“recipient”** include agent acting on their behalf in relation to the supply of goods or services.
15. As per clause (5) of section (2) of the CGST Act, **“agent”** means a person, including a factor, broker, commission agent, **arhatia**, del credere agent, an **auctioneer** or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both **on behalf of another**. The definition of agent includes an arhatia and further postulates that he/she should carry on business of supply or receipt of goods or services on behalf of another. **So, in the issue under consideration, the Kacha Arhtiya shall fall within the definition of an agent provided he/she carries on business on the behalf of another i.e. the principal, which in this case would be the agriculturist.** This assertion is further supported by the fact that the Kacha arhtiya charges commission from the agriculturist for the goods supplied and the expression, **“commission”** in commercial parlance is attributed as an income of the agent for the services rendered.
16. As seen earlier in the definition of supplier and recipient as well as in the definition of agent as detailed in para above, the emphasis is on the aspect of



whether the person is carrying on business or supplying goods or receiving goods on behalf of the person. The aspect of “**on behalf of**” has been examined in the Circular No. 57/31/2018-GST dated 04th September, 2018. The said circular draws inspiration from the Indian Contract Act, 1872 which is the font and source of the principal-agent relationship and discusses the said relationship in the context of para no. 3 of the Schedule I of the CGST Act wherein the supply or receipt of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. The said circular lays down an important parameter for determination of said supply in para 7 which is reproduced hereunder:

“It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.”

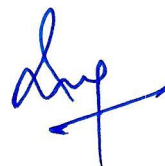
17. The above para clearly brings out the fact that an important determinant of defining the nature of principal –agent relationship in context of supply under GST is whether the invoice to the customer consumer is being issued by the agent in his own name or otherwise. Where the invoice to the customer is being issued by the agent in his own name then there would be two supplies



i.e. one from the principal to the agent and another from the agent to the customer. However, where the invoice to the customer is being issued by the agent in the name of the principal then there would be only one supply i.e. from the principal to the customer. This is an important aspect for the issue in hand as the nature of the entry in the notification hinges on identification of supplier and the recipient and the supply thereto.

18. Now, the question is concerned as to for the purpose of Notification No.4/2017-CT dated 28th June, 2017 who is supplier of goods as per the column No.4 to attract the provisions of RCM. Supplier has to be agriculturist and recipient has to be a registered person. Now issue arises whether the supplier of goods for the purpose RCM Notification includes its agent or not. As detailed earlier, the definition of supplier of goods in section 2(105) of the CGST Act includes his agent and, therefore, KachaArhtiya becomes supplier of goods. If a view is taken that supplier of goods is only the agriculturist and not KachaArhtiya, then it goes against the very definition of supplier so also goes against the logic as an agent is working in the capacity of having authority to act on behalf of principal. In other words, an agent enters into the shoes of principal. Thus, for the purpose of the said notification, the expression “**agriculturist**” would include the agent who acts on the behalf of the said person.

19. The contention of the appellant is that the Kacha Arhtiya is an agent of the agriculturist within the scope of circular No. 57/31/2018 dated 04th of September, 2018 and is therefore, the recipient of goods from the agriculturist and liable to pay GST under reverse charge mechanism. It needs to be comprehended that the said Circular only clarifies as to whether agent is required to be registered or not under the CGST Act. The crucial factor has been clarified in the last line of para 7 is “**whether the agent has authority to pass on or receive the title of goods on behalf of principal**”. In cases where agent issues the invoices on behalf of buyer, he gets a authority to pass on title on behalf of principal and therefore, he is covered under the definition of agent for the purpose of schedule 1 but in the cases where the agent does not get any authority to pass on title of goods and a title directly passes on from principal



to the buyer (without moving through agent) in such situation the agent transaction with the principal are not covered under schedule 1. Accordingly, in para 9 of the said circular, it has been clarified that agent will be required registered under section 24(vii) being a person the causes taxable supply of goods or services on behalf of principle in a situation where such agricultural produce is not exempted. This circular does not talk about RCM liability at all which is covered under Notification No.4/2017-Central Tax (rate) dated 28th June, 2017 (as amended) vide Entry No.4A provides that in case of supply of raw cotton supplier of goods being agriculturist the liability to pay GST will arise on recipient of supply in case such recipient is a registered person. For interpretation of this notification it is necessary to see who is supplier of goods and in terms of Section 2(105) supplier includes it is an agent, therefore, KachaArhtiya, by virtue of being an agent of the agriculturist steps into the shoes of supplier of goods and registered person receiving such goods is liable for discharge of tax under RCM liability.

20. Schedule II to the CGST Act, 2017 specifies the activities or transactions which are to be treated as supply of goods or services. This Schedule is aimed at enumerating as to which supplies under the Act will be treated as supplies of goods and which supplies will be treated as supply of services under the CGST Act, 2017. In the said Schedule, the entry 1(b) reads as under:

"SCHEDULE II

[See Section 7 of the CGST Act]

"Activities or Transactions" to be treated as Supply of Goods or Supply of Services

1) Transfer

.....

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

....."

From the above, it becomes clear that the **any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services and not goods**. It is an accepted position that KachaArhtiya does not

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hold title to the raw cotton so supplied to him by the agriculturist. However, from the activities so enumerated in para 3 of this order, he gets the right in goods in respect of receiving, storing, cleaning, grading and finally auctioning of raw cotton which he receives from the agriculturist **without getting any title over the raw cotton**. Therefore, in terms of above entry of Schedule II, this transfer is **deemed as supply of services for the purpose of CGST Act, 2017**.

21. This brings us to the RCM Notification No.4/2017-CT dated 28th June, 2017 as reproduced in para 4 of the order. As is abundantly clear from the notification, RCM liability is in respect of supply of goods and not in respect of services in connection with goods. Hence, as discussed above, the transaction between an agriculturist and that of Kaccha Arhtiya is a transaction involving supply of services and therefore, by no stretch of imagination, it could be covered under RCM Notification No.4/2017-CT dated 28th June, 2017 as reproduced in para 4 of this order.

22. Even, for the sake of argument, if the contention of the appellant is given credence, then it would emerge that an agent who is acting on behalf of principal, would be liable for the GST liability which would perforce imply that the principal i.e. the agriculturist is responsible for discharge of GST liability. This will defeat the very purpose of reverse charge mechanism as provided under Section 9 of the GST Act, 2017. Any interpretation which leads to illogical conclusion has to be eschewed. Therefore, it is clear that by no canon of interpretation, Kacha Arhtiya can be made liable to pay GST in terms of Notification No. 4/2017-CT dated 28th June, 2017(as amended). Moreover, the ultimate objective of RCM is to fix the GST liability on the person who is better organized being engaged in the business of supply of goods and services. Pakka Arhtiya by its very nature of activity is much more organised in the business dealing as compared to Kacha Arhtiya as he is purchasing cotton primarily for trading and hence is having much higher level of business volume and turn over. This also logically leads to fixing the liability of GST on Pakka Arhtiya in terms of sub-section (3) of Section 9 of CGST Act.



23. The submission of the appellant regarding the order of Appellate Authority for Advance Ruling, Haryana has conveniently overlooked the basic nature of the ruling given by the Authority for Advance Ruling. The said rulings are in the nature of “in personam” and not “in rem” and therefore their applicability as well as their protection cannot be sought by the others who were not party to the said proceedings.

24. In view of the foregoing discussions, we pass the following order:

ORDER

We uphold the order AAR/GST/PB/30 dated 10th of November, 2022 issued by the Authority for Advance Ruling, Punjab and the appeal filed by the appellant M/s Bansal Industries stands dismissed on all counts.



Rajesh Puri IRS (C&IT)
Chief Commissioner,
CGST and CX Zone, Chandigarh,
Chandigarh



Kamal Kishor Yadav, IAS,
Commissioner of State Tax,
Punjab.

Place: Chandigarh