

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

ORDER NO. AAR/GST/PB/021

DATED: 20.09.2022

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

Present:

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

Application Details:

GSTIN	03ADNPS0783N1ZZ
Legal Name	M/s Ahuja Industries
Trade Name	M/s Ahuja Industries, Dehlon Road, Sahnewal, Ludhiana-141120
Issue(s) on which advance ruling is sought.	Whether Goods Transport Agencies (GTA) service in respect of Cotton Seeds "Banaula" being the agriculture produce in terms of Entry at serial no. 21 in Notification No.12/2017-Central Tax Rates dated 28 th June, 2017 is exempted or not?
Personal Hearing Date	11.02.2022, 18.02.2022, 16.08.2022 & 26.08.2022
Hearing Attended by	Sh. S.L. Goyal, Advocate appeared on 11.02.2022 & 18.02.2022
Order Date	20.09.2022

1. M/s Ahuja Industries, Dehlon Road, Sahnewal, Ludhiana-141120, (GST Registration No. 03ADNPS0783N1ZZ) is engaged in the business of receiving Cotton Seeds "Banaula" after being transported by Goods Transport Agencies (GTA) which is classifiable with Chapter Heading 9965/9967 of the GST Tariff Act, 2017 and Goods and Service Tax in respect of said service is payable by the recipient under reverse charge mechanism.

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

In this regard personal hearings were held on 11.02.2022 before the Advance Ruling Authority, Punjab. Counsel on behalf of Applicant submitted oral submission and "Power of Attorney" and Jurisdictional Authority submitted their oral submissions. Another hearing was scheduled on 18.02.2022. On the scheduled date counsel on behalf of the applicant appeared late and submitted written comments that is placed on file. Jurisdictional Authority also submitted written comments on the issue which are placed on file. Applicant had deposited only 5,000 for IGST while filling Advance ruling application. In this regard, a notice dated 02.03.2022 was issued to the applicant to deposit the requisite fee of Rs. 10,000 (5,000 each for SGST and CGST) as prescribed under the Act. Proof of fee deposited by the applicant on 21.03.2022 is place on file. Another hearing was scheduled on 16.08.2022. On the scheduled date none present from applicant side. Reply through email dated 16.08.2022 received vide which applicant has submitted that he may not be able to attend the meeting on grounds of foreign travel. So, he requested to kindly grant an adjournment of the hearing scheduled on 16th August, 2022 to any date convenient to Authority. Vide email notice dated 18.08.2022, the applicant has been given last opportunity to appear in person or through video conferencing to present his case before the Advance Ruling Authority on 26.08.2022 but none appeared.

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

1. Are Cotton Seeds "Banaula" included in the list of agricultural produce for exemption in GTA service under Notification No.12/2017dated 28thJune, 2017 (Tariff heading 9965/9967)?
2. If not, what is the tax rate applicable on M/s Ahuja Industries for GTA services in respect of Cotton seeds?

4. ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING

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

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

- (a) Classification of any goods or services or both;*
- (b) Applicability of a notification issued under the provisions of this Act;*
- (c) Determination of time and value of supply of goods or services or both;*
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) Determination of the liability to pay tax on any goods or services or both;*
- (f) Whether applicant is required to be registered;*

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

It is observed that the query of the applicant in para III is related to the question as to under which provision/ section GST is to be charged on GTA services in respect of Cotton seeds, if they are not exempt, fall under definition of 'Agriculture Produce' under GST Act. This question falls under the ambit of Section 97(2) of the CGST Act, 2017, read with Section 97(2) of the PGST Act, 2017. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

5. SUBMISSIONS BY THE APPLICANT: -

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

- (a)** That they were engaged in the business of receiving Cotton Seeds "Banaula" after being transported by Goods Transport Agencies (GTA) which is classifiable with Chapter Heading 9965/9967 of the GST Tariff Act, 2017 and the said service is payable by the recipient under reverse charge mechanism.
- (b)** That GTA services in r/o agricultural produce, is exempt under GST Act vide Notification No.12/2017 dated 28th June, 2017 (Tariff heading 9965/9967).
- (c)** That as per definition in para 2(d) of Notification No.12/2017 dated 28th June, 2017 'Agricultural produce' means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary markets."
- (d)** That as per definition in para 2(e) of the above Notification, 'Agricultural Produce Marketing Committee or Board' constituted under a state law for the time being in force for the purpose of regulating the marketing of agriculture produce.
- (e)** That as per Section 2(a) of The Punjab Agricultural Produce Markets Act, 1961 in its Schedule at Sr. No. 15 incorporates Cotton Seed "Banaula" is an agricultural produce.

- (f) That they cited the judgment of Hon'ble CESTAT Delhi in the case of R. K & Sons Vs. CCE Rohtak-2016(42) STR 314(Tri.Del) where in it was held that 'ginned cotton' is covered by the definition of 'agricultural produce'.
- (g) That they sought information from 42 different authorities under RTI regarding applicability of tax on GST services (under reverse charge mechanism) and supplied copies of reply received.

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

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

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

- (b) Vide Notification No. 12/2017-Central Tax (Rates) dt. 28.06.2017 exemption has been provided in respect of agricultural produce, firstly, vide entry at Sr. No 21(a)-in respect of GTA services and secondly, vide entry at Sr. No. 54(g) in respect of services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of the said 'agricultural produce.;
- (c) That even though the nature of exemption granted vide entries at S.No. 21(a) and 54(g) is different, the definition of the term 'agricultural produce' as given vide para 2(d) of Notification dt. 28.06.2017 is common in respect of both the said entries.
- (d) That said cotton seeds fall in the ambit of the expression "for.....raw material" as used in the definition of "agricultural produce" as given in para 2(d) in the Notification No.12/2017dated 28thJune, 2017.
- (e) That the elementary law relating to interpretation of any statute, including a Notification, is that any interpretation which renders certain words of the statute redundant or purposeless should be

eschewed in favour of an interpretation which avoids such a consequence.

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

6. SUBMISSIONS BY THE JURISDICTIONAL AUTHORITY: -

The jurisdictional Assistant Commissioner State Tax, Ludhiana-5 vide letter dated Nil furnished their comments on 18.02.2022 wherein they inter alia submitted as under: -

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

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

There have been instances when terms in different statutes are interpreted in different manner. It depends upon the objectives of the particular statute with which it was enacted. Thus if cotton seed is

interpreted as agriculture produce under other Acts and not under the GST Law could be due to the reason that GST Law is very particular in providing exemptions to certain items only.

7. DISCUSSIONS AND FINDINGS:

1. We have gone through all the case record viz. application of Advance Ruling, relevant Notifications, records and submissions made at the time of personal hearing by the learned Counsel. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.
2. At the outset, we would like to state that the provisions of both the CGST Act and the SGST Act are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the SGST Act.
3. The core issue is to be decided is whether the Cotton seed 'Banaula' falls under definition of Agriculture produce and qualifies for exemption in GTA service under Notification No. 12/2017-Central Tax dated 28.06.2017
4. The applicant is engaged in the business of receiving Cotton Seeds "Banaula" after being transported by Goods Transport Agencies (GTA) which is classifiable with Chapter Heading 9965/9967 of the GST Tariff Act, 2017 and the GST on said service is payable by the recipient under reverse charge mechanism.
5. The issue on which the applicant has requested for decision is that are Cotton Seeds "Banaula" included in the list of agricultural produce for exemption in GTA service under Notification No.12/2017 dated 28th June, 2017 (Tariff heading 9965/9967)? If not, what is the tax rate applicable on M/s Ahuja Industries for GTA services in respect of Cotton seeds?
6. Before proceeding further, it is pertinent to discuss the term Cotton Seed and how it is extracted.

Cotton seed is obtained from raw cotton, which is produced by cultivation of cotton plants. Raw cotton is plucked from the plant usually by hand or plucker machine and sold for primary market as such without further processing by the cultivator or the producer. The case of cotton seed is such that it is obtained from raw cotton by way of industrial process called ginning. The process involves separating lint from the seed using machines. Cotton seed so produced is then transported by the persons supplying services of GTA to the factories for extracting cotton seed oil.

7. The terms 'agricultural produce' is defined under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. It is also defined under the Punjab Agriculture Produce Markets Act, 1961 (the PAPM Act).

(a) Under the PAPM Act, the market committee has been empowered to levy market fees on purchase/sale of agricultural produce.

The PAPM Act defines 'agricultural produce' as –

"Agricultural produce means all produce and commodities whether processed or unprocessed of agriculture, horticulture/apiculture, sericulture, animal husbandry, fleeces (raw wool) and skin of animals, forest produce [livestock, fisheries,] etc. as are specified in the Schedule or declared by the State Government, by notification in the Official Gazette, from time to time and also includes a mixture of more than two such products."

The Schedule appended to the Act lists out several items which are to be considered as 'agricultural produce'. Cotton seed is one of the items listed in the said Schedule.

By virtue of the definition of agricultural produce and because cotton seed is included in the Schedule the market committee levies market fees on purchase/sale of cotton seed.

(b) In GST, the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 defines the term 'agricultural produce' as under:-

"Agricultural produce means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market".

(c) In view of the above, levy of market fees on purchase/sale of cotton seed by treating it as agricultural produce under the PAPM Act is correct. However, it does not make cotton seed 'agricultural produce' for the purpose of levy of or exemption from GST as agricultural produce is clearly defined in GST.

8. Thus, scope of the definition of 'agricultural produce' under both laws is different. While the PAPM act lists out specific products, the definition in GST recognizes only those products as 'agricultural-produce' which are direct result of cultivation/rearing. It mandates that any such produce which requires further processing, other than

that by the producer/cultivator himself, shall no longer be rendered as 'agricultural produce'.

9. The producers/farmers sell the produce of cotton as such without any further processing. The produce is sold to mill/plant owners who carry out necessary processes using machinery. It is this further processing of the produce that brings the cotton seed out of the definition of 'agricultural produce' under GST.

10. In light of the aforesaid legal provisions, one of the essential conditions to qualify as agriculture produce is that the produce does not require any further processing or processing is carried by producer/cultivator. In present case, it may be seen that the cotton seed emerges after processing in mills, thus the above condition is not fulfilled and the same cannot be said to be agriculture produce as per the Notification.

11. Further, it is held in the plethora of judgments that exemption Notification should be strictly construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication. Reliance is placed on the following judgments: -

(12) Hon'ble Supreme Court of India in the case of Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Versus Commissioner of Central Excise and Service Tax, Alwar cited as 2022 Live law (SC)203. Relevant paras of the judgments is reproduced below: -

"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

8.1 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.

8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

8.3 As per the law laid down by this Court in a catena of decisions, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is so not found in the present case.

8.4 Now, so far as the submission on behalf of the respondent that in the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption notification, when it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification.

Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language.

Thus, there is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification

Hon'ble Supreme Court of India in Civil Appeal Nos. 7710-7714 OF 2021 in the case State of Gujarat Versus Arcelor Mittal Nippon Steel India Limited in para 24 of the order has held that;

"24. It is held that the respondent -Essar Steel Ltd. – the eligible unit was not entitled to the exemption from payment of purchase tax under the original Entry No.255(2) dated 05.03.1992, firstly, on the ground that it did not fulfill the eligibility criteria/conditions mentioned in the original Entry No.255(2) dated 05.03.1992 and secondly that there was a breach of declaration in Form No.26 furnished by the respondent – eligible unit – Essar Steel Ltd."

We found that the judgments of Hon'ble Apex Court are squarely applicable in the instant case and applicant is not eligible to avail exemption in payment of GST on GTA services.

13. Therefore, cotton seed emerging from the intermediate process do not fall in the definition of 'agricultural produce' under GST. It is apparent from the definition of 'agricultural produce' that the government intends to provide exemption to the produce occurring only at the first stage of the cultivation or rearing and not to those which are processed in factories after they are sold by the cultivator/producer.

(B) Rate of GST: -

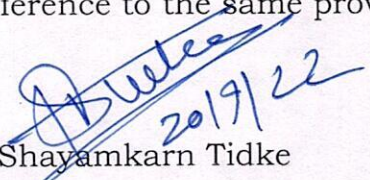
The services provided by a goods transport agency in relation to transportation of cotton seeds in a goods carriage are classifiable under heading 9965 and leviable to CGST @2.5%, provided that credit of input tax charged on goods and services used in supplying the service has not been taken, else @6%, under Sr. No. 9 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

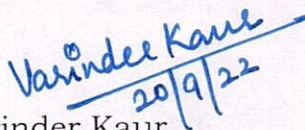
In view of the foregoing, we pass the order as under: -

RULING

- (i) Cotton Seed (Banaula) is not eligible for exemption from payment of GST on GTA services as per Notification No. 12/2017-Central Tax (Rate) dt. 28.06.2017(Tariff heading 9965/9967).
- (ii) GST chargeable is 5% (2.5% CGST and 2.5% SGST) on GTA services availed by the applicant for transporting Cotton Seed (Banaula). provided that credit of input tax charged on goods and services used in supplying the service has not been taken, else @6%, under Sr. No. 9 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

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


Viraj Shayamkarn Tidke
Member, SGST


Varinder Kaur
Member, CGST

Through Regd. Post

To

M/s Ahuja Industries, Dehlon Road,
Sahnewal, Ludhiana-

No.PB/AAR/2022/165-170

Dated: 29/7/2022

Copy to:

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

4. The Commissioner, CGST, Jalandhar, camp office GST Bhawan, Rishi Nagar, Ludhiana.
5. The Assistant Commissioner of State Taxes, Ludhiana-5.

