



सत्यमेव जयते

BEFORE THE AUTHORITY FOR ADVANCE RULINGS
for the State of Andhra Pradesh (Goods and Service Tax)
(5th Floor, O/o Chief Commissioner of Commercial Taxes, D.No:5-56, Block-B, R.K
Spring Valley Apartments, Edupugallu, Vijayawada-521151.)

Present:

Sri. J.V.M Sarma (Member)

Sri.Amaresh Kumar (Member)

The 10th day of October, 2018

Ruling No. AAR/AP/ 17 (GST)/2018

In

Application No.AAR/ 28 (GST)/2018

1	Applicant	M/s PRAGATHI ENTERPRISES(GSTIN:371800000156ARQ) Jammupalem Village, Tangutur, Prakasam – 523274.
2	Jurisdictional Officer	Assistant Commissioner(State Tax), Ongole II Circle,
3	Present for the Applicant	Sri. A. Siva Prasad (Authorized Representative)
4	Present for the Jurisdictional Officer	Remarks Received
5	Date of Personal hearing	14.09.2018

Note: Under Section 100 of the APGST Act'2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section 99 of APGST Act'2017, within a period of 30 days from the date of service of this order.

M/s PRAGATHI ENTERPRISES, Jammulapalem Village, Tangutur, Prakasam-523274 (hereinafter also referred as an **applicant**), has filed an application in Form GST ARA-01, dated :07.09.2018, for seeking advance ruling on 'rate of tax under GST w.r.to classification of the commodity' to their supplies'. The issues raised by the applicant in his application for advance ruling are given here under....

- ❖ What is the rate of GST applicable on tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves?
- ❖ If the applicant purchases tobacco leaves from other dealers who have purchased them farmers, for the purpose of trading what will be the applicable rate of tax?
- ❖ If the applicant segregates the tobacco into grades depending upon their size (width), colour/shade, length, texture of the leaf etc., and sells such graded tobacco leaf what is the applicable rate of tax?
- ❖ If the tobacco leaves are butted and sold to other dealers what will be the applicable rate of tax?
- ❖ If the applicant gets the tobacco leaves re dried without getting them threshed what is the applicable rate or tax?
- ❖ If the applicant gets the tobacco threshed and re dried on job work basis at GLT plants and then sells such threshed and re dried tobacco leaves what is the applicable rate of tax?

1. The applicant is a trader in tobacco in all varieties and form of tobacco available. Guntur and Prakasam Districts are famous for tobacco leaf and various varieties of Tobacco, mainly FCV as well as Natu tobacco (Non-FCV) are widely available in these regions.
2. The applicant is registered with The Tobacco Board as "Dealer in Tobacco" vide Regn No:TB/DEALER/2018/4753, but not registered under GST as his turnover is below the threshold limit. However he would like to register with GST authorities in anticipation of his growing business requirement as and when the turnover crosses the threshold limit.
3. It is submitted that,
 - a. Until the enactment of GST Act, the products of Tobacco leaves / Unmanufactured Tobacco were not under the tax net both under the VAT laws and under Central Excise laws. Even the service portion of threshing and redrying was held to be exempt under Service tax law.



After the introduction of GST, the commodity of tobacco is brought under the taxability from the stage of tobacco leaves itself.

- b. The applicable rates of unmanufactured tobacco is covered under two heads under the tariff which are as under vide Notification no; 1/2017, Central Tax (Rate), both having the same HSN Code of 2401, viz.,

Schedule	HSN	Product Description	Rate of GST
Schedule - I : SI No 109	2401	Tobacco Leaves	CGST 2.5% i.,e total GST % = 5%
Schedule - IV; SI NO; 13	2401	Unmanufactured Tobacco; tobacco refuse (other than tobacco leaves)	CGST 14 % ie., total GST = 28%

As per explanatory notes to HSN 24.10 'Unmanufactured Tobacco' is defined and the same is reproduced below.

24.01 - Unmanufactured tobacco; tobacco refuse:

- 2401.10 - Tobacco, not stemmed/ stripped
2401.20 - Tobacco, partly or wholly stemmed/
stripped
2401.30 - Tobacco refuse

- c. There is clarity as to the product description in the above two heading. However the words of Tobacco leaves and Unmanufactured Tobacco (other than tobacco leaves) are not defined in the tariff.
- d. FCV Tobacco Leaves, Flue Cured Virginia Tobacco is widely available in the region of Guntur and Prakasam and these leaves are cultivated by the farmers. FCV Tobacco is regulated and is permitted to be purchased or sold only at the Tobacco Auction Platforms conducted by the Tobacco Board.
- e. The tobacco leaves after cultivation will be plucked and separated from the plants. These leaves, as plucked from trees are green in color and are very tender, delicate and very high in moisture. In this stage they will get damaged and rotten within few days of time unless cured. The tobacco leaves are cured (technical name for drying) in various forms or styles viz., Sun curing, Air curing, Flue Curing etc. whereby the leaves are dried and the moisture levels are reduced.

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- f. The farmers cure the tobacco at their farm fields itself and after curing the tobacco leaves will be packed as bales and brought to the Tobacco Auction platforms or for supply to dealers. No tobacco leaves can be brought for sale without curing by farmers, as the green leaf will get damaged within two to three days, if not cured immediately after plucking.
4. It is submitted that the dealer intends to engage in the tobacco business which involves the following activities:-
- a) The dealer purchases the cured tobacco leaves brought by tobacco farmers at the Tobacco Auction Platforms in case of FCV variety or directly from farmers in case of Non-FCV Variety of tobacco and sells them to other dealers, or exporters or manufacturers of tobacco.
 - b) The dealer also purchases the tobacco leaves from other dealers.
 - c) In most of the cases, the applicant trades in tobacco leaves as they are purchased without rendering any process on them what so ever. However in certain special circumstances the applicant may undertake the following minimal process on the tobacco before supplying as per the requirement of the dealer.
 - (i) **Grading:** The applicant may get an order from the buyers to grade the tobacco. In such a case, the applicant engages manual labour to segregate or classify the tobacco leaves into various grades depending on their size (width), length, colour shade and other physical parameters of the leaf. These activities will be performed manually by unskilled labour and who will open the bale and separate the tobacco leaves to physically grade the tobacco into different categories as stated above. The tobacco leaves so graded, will again be packed into bales and wrapped in Jute bags for onward supply to other tobacco dealers or manufacturers.
 - (ii) **Butting:** The tobacco leaf when plucked from the plant will have a rough edge on the side it attaches to the plant. These rough edges may damage other leaves or make packing difficult. Therefore the edge of the tobacco leaf, which is called butt of the leaf, is removed by manually chopping them off. This will not alter any other character of the leaves. Butting is a very rare and occasional requirement of the buyer and only 2 to 3% of the total tobacco is ordered for butting. If the buyer requires the leaf to be butted, the same is undertaken along with grading by manual labour and then packed by wrapping jute bags.



(iii) **Redrying:** the leaves supplied by farmers were dried (Cured) through various methods like Air, Sun, Flue curing. As these processes are undertaken on farms, the level of drying of the leaves may not be uniform throughout the leaves and there could be some portions of leaves which are not exposed to sun and hence might not be cured properly. Hence the buyers may order for redrying of the leaf, and the leaves are subjected to drying process once again on machinery and this will uniformly dry the tobacco to the required moisture. Redrying will not alter the shape or other physical or chemical parameters of the leaf. Normally re-drying is ordered for, if it is not proposed to supply the tobacco for immediate threshing. These processes of grading, butting or redrying are undertaken at a specific requirement of the buyer and hardly 5% of the tobacco leaves is specified for these processes.

- d) The applicant will normally sell the tobacco leaves to tobacco exporters or manufacturers. The tobacco leaves will be subject to a process called Threshing and Redrying at GLT plants. Threshing is a process of separating the stem or the Mid-rib of the leaves and the leaves portion without stem is called 'Lamina'. The threshing is undertaken on certain plant and machinery, normally referred to as Green Leaf Threshing Plants (GLTs). In GLTs, the lamina and stem are separated and the Lamina is redried to ensure uniform and homogenized moisture throughout the lot.
- e) The Tobacco after threshing and redrying is also referred in the trade parlance as tobacco leaf only. The essential characteristic of the tobacco leaves remain unaltered and they are not commercially different product from the tobacco leaf. There will not be any change in the tobacco except that the stem is separated and the leaves are broken into pieces during the process.
- f) The applicant do not own a GLT Plant and hence he cannot undertake the threshing or redrying process on his own. However if the buyers so order, he may get the tobacco leaves threshed and redried at GLT plant on job work basis and supply the same to the buyer.

5. The applicant hereby submits the following facts of the case while seeking this advance ruling

- a) Tobacco being an agricultural plant and leaves being the prominent utility, plucking of the tobacco is the first and foremost step at the farm level. These leaves as plucked from plants are green color and are very tender, delicate and very high in moisture. At this stage they will get damaged and rotten within few days of time unless properly dried immediately, as any other agricultural commodity in the form of leaves will

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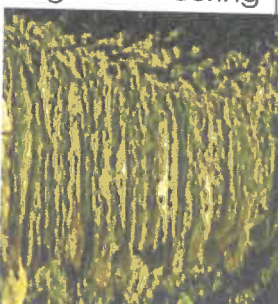






require. Hence they are necessarily be cured (technical name for drying) by the agriculturist/ farmers himself in various ways viz., Sun curing, Air curing, Flue Curing, Fire curing etc., whereby the leaves are dried and the moisture levels are reduced to make them fit for primary marketability by the farmer. **It is pertinent to note here that the entire tobacco brought for the primary market is after curing by the farmers. It is needless to say that the green tender leaves as plucked from the plant will never be marketed anywhere in the world.**

- b) A Detailed chart of tobacco from farm to final product is furnished.
- c) After procuring the tobacco leaves in the market, the leaves can either be traded as such or may be graded as per their colour, length and other parameters and then traded or used for further manufacturing of tobacco. Occasionally the tobacco may be butted and re-dried without threshing.
- d) The tobacco is then threshed (separating the leaf from stem portion) and the moisture contents of the tobacco are made even through re-drying. **This is called threshing and re-drying of tobacco leaves and even at this stage also it is commonly referred to as Tobacco leaf.**
- e) Tobacco leaves after threshing and redrying are sent to manufacturers for manufacture of cigarettes, cigars, chewing tobacco and other tobacco products. In this process there will be many intermittent stages like cut-rack etc., which are commonly referred to as unmanufactured tobacco even under the earlier taxes regime and at the stage of cigarettes and cigars it is called manufactured tobacco.

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<p>Stage 1: Green Leaf</p> 	<p>Stage 2. Air curing</p> 	<p>Stage 2. Sun curing</p> 	<p>Stage 2. Flue curing</p> 
<p>The tobacco leaves after cultivation will be plucked and separated from the plants. These leaves as plucked from trees are green in color and are very tender, delicate and very high in moisture. In this stage they will get damaged and rotten within few days of time unless cured.</p>	<p>The tobacco leaves are cured (technical name for drying) in different forms or styles viz., Sun curing, Air curing, Flue Curing etc. (any one method) whereby the leaves are dried and the moisture levels are reduced. Air curing will be adopted for lighter / thin type of leaves</p>	<p>Sun curing involves exposing the leaves under sun, in inverted positions. Sun cures enable more dryness than air curing</p>	<p>Flue curing involves transmitting heat through ducts and this will result in more uniform and consistent curing of the tobacco leaves.</p> <p>All three of curing will be undertaken by farmers at the field level.</p>
<p>Cured tobacco Leaf</p> 	<p>Bundled for Trading</p> 	<p>Optional Process (Grading)</p> 	<p>Optional Process (Butting)</p> 
<p>The cured tobacco leaves with low-moisture due to curing will be first tradable commodity (Primary marketable product)</p>	<p>The cured tobacco leaves will be bundled into bales and brought to the auction platform</p>	<p>Grading involves manual separation of tobacco leaves into various classes</p>	<p>Butting means cutting the butt (small terminal portion of the leaves) portion of the leaf for better</p>

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	in case of FCV (Flue Cured Virginia Tobacco) and to market in case of Non-FCV tobacco.	depending upon color, length etc., for better market prices.	adoptability to the machinery. Butting is optional and is carried very occasionally.
Optional Process (Redried)	Threshing (Lamina or leaf portion)	Threshing (Stem portion)	Threshed leaf export
			
Cured tobacco leaves may occasionally be re-dried, when the order for threshing is likely to be delayed or if there is a export order without threshing.	Threshing means separates the leaf from the stem and the leaf portion is called Lamina. This process may be initiated directly from the stage of bales (bundles) or Graded / Butted stages as per the requirement of the buyer. The threshed will be refried, threshing involves wetting the leaves for easier separation.	The stem portion coming out from threshing may be exported or may be sold in local market for mixing purposes in various commodities.	80% of FCV tobacco is exported at Threshing stage and balance is sold to local manufactures of Cigarettes. Other kinds of tobacco may be sold for different purpose.

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<p>Cut-Rag</p> 	<p>Cut rag (Chemically blended)</p> 	<p>Cigarette</p> 	<p>Pipe</p> 
<p>This is machine made cutting of strands of tobacco (unmanufactured)</p>	<p>Chemically blended and flavoured tobacco.</p>	<p>Filled into a cigarette tube.</p>	<p>Filled into a somke-Pipe.</p>
<p>Fermented Leaf</p> 	<p>Cherrots</p> 	<p>Cigars.</p> 	<p>Bidis</p> 
<p>Fermented dried tobacco leaves for the manufacture of cherrots or cigars.</p>	<p>Rolled Fermented leaves into Cherrots.</p>	<p>Rolled Fermented leaves into Cigars, (tapered on one side)</p>	<p>Tobacco dust, wrapped along with other materials into Bidi Leaves</p>
<p>Tobacco Chew:</p> 	<p>Guthka</p> 	<p>Khaini</p> 	<p>Snuff</p> 
<p>Chewing Tobacco.</p>	<p>Chewing tobacco treated with lime and other chemicals</p>	<p>Chewing tobacco treated with flavours and Masalas.</p>	<p>Tobacco snuff made from dried tobacco leaves and dust for inhaling purpose.</p>

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6. **Contentions of the applicant.**

- a) All of the tobacco crop that is produced shall have to be cured before it can be marketed commercially in the primary market. And the tobacco that is cured and brought to auction platforms is only called tobacco leaves. In the common parlance, tobacco leaves mean cured (dried) tobacco leaves only as the green tender is unfit for any commercial operations.
- b) As the words tobacco leaves and unmanufactured tobacco (other than tobacco leaves) are not defined, the meaning of the words shall be drawn having regard to the **legal precedents, rules of interpretation** and the meaning those words have in their **common parlance**.
- c) The dictionary meaning of the term Tobacco is
- any of several plants belonging to the genus Nicotiana, of the night shade family, especially one of those species, as N. tabacum, whose leaves are prepared for smoking or chewing or as snuff
 - the prepared leaves, as used in cigarettes, cigars, and pipes
 - any product or products made from such leaves.
- d) **In the absence of any definition given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted** as held in the case of Oswal Agro Mills Ltd vs. CCE, [1993 (66) E.L.T. 37 (S.C.)].
- e) In the case of Idupulapati Sessa Rao, Karedu Vs State of AP (13 APSTJ 44), the Honourable Sales Tax Appellate Tribunal of AP, Hyderabad held that in the classification of commodities, the meaning of the article should be understood according to the common commercial understanding and not in their scientific and technical sense.
- f) It is also a well settled law that and held in various celebrated cases like M/s D.s. Bist & sons Nainital 1979(004) SCC – 0741 that “ It should be remembered that almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his farm or elsewhere. In order to bring them to a condition of non-perishability and to make them transportable and marketable, some minimal process is necessary to be applied to many varieties of agricultural produce...But, there may be some other kinds of agricultural produce which require some more processing to make it marketable. **In**





the case of such a commodity what one to judge is to find out whether in relation to that agricultural produce the process applied was minimal or was it so cumbersome or long-drawn that either, in common parlance or in the market, or even otherwise, any body would not treat the produce as an agricultural produce.....

- g) The Central Tobacco Research Institute (CTRI), Guntur in its letter dt.11.12.2012 addressed to the Indian Tobacco Association explained as follows: "The operations of stripping, threshing, re-drying and packing are contributing to the value-addition to the farm produced tobacco by improving the shelf-life and maintaining the quality. Further, export price of tobacco generally influences the farm price. Hence, the above operations are construed as an extension of agricultural activity only as in the case of other commodities like cotton, chillies etc. The threshed and re-dried FCV tobacco has no use as such, hence it can be considered as primary agricultural produce only.
- h) It is a settled legal position that an entry in the tariff has to be read 'as it is' following the principle of literal Rule of interpretation and the 'word', 'term' or a 'phrase' shall not be read by affixing or suffixing another word to it. In the above entry, the term 'Tobacco Leaves' is mentioned without any qualifier attached to it viz., 'dried tobacco leaves', 'undried tobacco leaves', 'cured tobacco leaves' etc., In such cases, it cannot be read that tobacco leaves means only those leaves cut from the plants and tobacco leaves on which certain operations are conducted will not be 'tobacco leaves'. **It is also clear that in the absence of the definition given to the term 'tobacco leaves', shall be understood in its natural and commercial meaning.**
- i) There are many other agricultural commodities, whose principal utility is also in the form of leaves. To cite a few, Tendu leaves, Bidi Leaves, Biryani Leaves etc., All these products of leaves are also dried to meet their intended usage and without drying there is no way that these products can be used or even preserved. Thus depending upon the intrinsic nature of the product, drying will become an essential and inevitable process without which the product itself cannot exist.
- a) When the words tobacco leaves are used without any qualifying adjectives, it can only mean that tobacco leaves in a widest possible import. Had the legislature intended it to qualify the same, it could have employed specified words to that effect, as can be found from the same notification, in many other instances. To cite a few.....

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Fish:-	Taxable fish: 3. 0305 Fish, dried , salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption Sch. I---2.5%'	Exempt Fish 19. 0301 Live fish. 20. 0302 Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304 21. 0304 Fish fillets and other fish meat (whether or not minced), fresh or chilled.'
Tea leaves:-	Taxable Tea leaves '36. 0902 Tea, whether or not flavored [other than unprocessed green leaves of tea]-2.5% Sch.I'	Exempt tea leaves '61. 0902 Unprocessed green leaves of tea'
Nuts	Taxable nuts: 28. 0802 Dried areca nuts, whether or not shelled or peeled 29. 0802 Dried chestnuts (singhada), whether or not shelled or peeled---Sche I---2.5%' '62. 1109 00 00 Wheat gluten, whether or not dried ---Sch. I---2.5%' (gluten means proteins contained in wheat)	Exempt Nuts'49. 0802 Other nuts, Other nuts, fresh such as Almonds, Hazelnuts or filberts (Coryius spp.), walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.), Areca nuts, fresh , whether or not shelled or peeled'
Dates	Taxable dates:- 16. 0804 Dates, figs, pineapples, avocados, guavas, mangoes and mangos teens, dried ---Sche.II---6%	Exempt dates 51. 0804 Dates, figs, pineapples, avocados, guavas, mangoes and mangos teens, fresh .

Government therefore made its intention unambiguously clear wherever it intended to levy tax or exempt dried and processed goods by those specific words. **Thus while Entry No.109 mentions in simple terms 'Tobacco leaves', it can by no stretch of imagination be interpreted as to mean only green leaves or 'other than dried leaves'.**

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j) There is a pronouncement by the Authority for Advance Rulings, New Delhi Bench (AAR) 06-04-2018 in the case of Shalesh Kumar Singh. The Advance ruling authority grossly erred while interpreting the nature of commodity and adopting the true spirit of legislature which has intentionally created three different entries under GST in relation to Tobacco. The Advance Ruling Authority merely looked into the phrase 'Tobacco leaves as such' is not applicable to Dried leaves and decided that the same fall under 28% which is against the spirit because in such a case **there will be not be any product that can be taxed at 5%**. It means that the provision of Schedule I Item no 103 will go redundant without application which is definitely not the intention of the legislature.

k) The applicable rates of GST for goods were mentioned in Notification 1/2017 Central Rate. It is not mentioned as to who shall be supplier and who shall be recipient. While notification 4/2017 CGST (R) notifies the cases where the RCM (reverse charge Mechanism) shall be applied, it is silent as to the rate. Thus as long as the product remains the same, it does not matter whether the same is procured from an agriculturist or an unregistered dealer, or registered dealer. **The application of RCM is only to prescribe as to who shall pay the tax and it had no bearing on the applicability of the rate of GST.**



7. **The applicant has sought for the following clarifications.**

- i. What is the rate of GST applicable on tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves?
- ii. If the applicant purchases tobacco leaves from other dealers who have purchased them from farmers, for the purpose of trading what will be the applicable rate of tax?
- iii. If the applicant segregates the tobacco into grades depending upon their size (width), colour/shade, length, texture of the leaf etc and sells such graded tobacco leaf what is the applicable rate of tax?
- iv. If the tobacco leaves are butted and sold to other dealers what will be the applicable rate of tax?
- v. If the applicant gets the tobacco leaves redried without getting them threshed what is the applicable rate of tax?
- vi. If the applicant gets the tobacco threshed and redried on job work basis at GLT plants and then sells such threshed and redried tobacco leaves what is the applicable rate of tax?

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G. Sivarama Prasad C.A., 

The Authorised representative Sri. ...have appeared before the authority and explained the process of tobacco products from the field to the end product, with stage wise physical specimens of tobacco. In support of his argument he has furnished the letter issued by the ICAR - Central tobacco Research Institute - Rajahmundry, Andhra Pradesh. CTRI 

The concerned jurisdictional authority Assistant Commissioner State Tax Ongole -2 have submitted that there are no proceedings passed or pending in this regard. .

Legal Position

1. The rates of GST in relation to tobacco are covered under the heads as under, (Notification no; 1/2017, Central Tax (Rate),

Schedule	HSN	Product Description	Rate of GST
Schedule - I : SI No 109	2401	Tobacco Leaves	CGST 2.5% i.e total GST % = 5%
Schedule - IV; SI NO; 13	2401	Unmanufactured Tobacco; tobacco refuse (other than tobacco leaves)	CGST 14 % i.e., total GST = 28%
Schedule - IV; SI NO; 14	2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes	CGST 14 % i.e., total GST = 28%
Schedule - IV; SI NO; 15	2403	Other manufactured tobacco and manufactured tobacco substitutes; -homogenized or -reconstituted tobacco; tobacco extracts and essences [including biris]	CGST 14 % i.e., total GST = 28%

2. As per the notification 4/2017 CGST (Rate), , specifies the the supply of the following goods shall be under 'Reverse charge'

No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of sup
3.	2401	Tobacco leaves	Agriculturist	Any registered person





3. As per the HSN heads under Customs Tariff Act the relevant heads are as under.

2401	Unmanufactured tobacco; tobacco refuse.
2401 10	Tobacco, not stemmed or stripped
2401 10 10	Flue Cured Virginia Tobacco
2401 10 20	Sun cured Country (Natu) Tobacco
2401 10 30	Sun cured Virginia Tobacco
2401 10 40	Burley Tobacco
2401 10 50	Tobacco for manufactures of Bidis, not stemmed
2401 10 60	Tobacco for manufactures of Chewing tobacco
2401 10 70	Tobacco for manufactures of cigar and cherrot
2401 10 80	Tobacco for manufactures of Hokkah tobacco
2401 10 90	Other
2401 20	Tobacco partly or wholly stemmed or stripped.
2401 20 10	Flue Cured Virginia Tobacco
2401 20 20	Sun cured Country (Natu) Tobacco
2401 20 30	Sun cured Virginia Tobacco
2401 20 40	Burley Tobacco
2401 20 50	Tobacco for manufactures of Bidis, not stemmed
2401 20 60	Tobacco for manufactures of Chewing tobacco
2401 20 70	Tobacco for manufactures of cigar and cherrot
2401 20 80	Tobacco for manufactures of Hokkah tobacco
2401 20 90	Other
2402	Cigars, Cheroots, Cigarillos And Cigarettes, Of Tobacco Or Of Tobacco Substitutes
2403	Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reconstituted" tobacco; tobacco extracts and essences [including biris]

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4. As per the Circular of Tax Research Unit, vide F. No. 332/2/2017, Government of India Ministry of Finance Department of Revenue Tax Research Unit , Dec – 2017,

question no. 42 "Tobacco leaves falling under heading 2401 attracts 5% GST on reverse charge basis in respect of supply by an agriculturist. What is the meaning of tobacco leaves?"

" it has been answered that "For GST rate of 5%, tobacco leaves means, leaves of tobacco as such or broken tobacco leaves or tobacco leaves stems"

WE have gone through the facts of the case presented by the applicant and the material of evidence i.e, copies of invoices raised by the applicant and the relevant legal position. As seen from the above it is felt that the transactions of tobacco from auction platform to the supply made to the exporter are to be interpreted in the light of the relevant notifications and to decide the rate of tax accordingly.

The applicant is

- procuring / purchasing the tobacco leaves in the form of bundles at auction place,
- selling the same to the traders,
- getting the leaves procured got threshed/ stripped through a job-worker and suppliers to dealers, manufacturers and exporters.

The ICAR – central tobacco research institute, Rajahmundry, A.P, has observed as under:

"In tobacco matured and ripe tobacco leaves are harvested and subjected to the process of curing to remove moisture to a desired level (10%-12%). Green leaves as such are not used for making tobacco products (both smoke and non smoke) as it contains huge moisture (75% - 80%). The process of curing is done by the solar energy (sun curing), or air /shade or thermal energy (flue curing) depending upon the type of tobacco to be cured. As the curing process is done by the farmer at farmer's place, it is construed as an integral part of tobacco leaf production process"

As seen from the different stages of commodity i.e., from the leaves stage to the final product (manufactured tobacco), the green leaf plucked from the plant undergoes different types of curing to reduce the level of moisture to the maximum extent for sustainability and to continue as leaf for further processes. The tobacco leaf will be entitled as a commercial commodity only after drying (curing) and normally put to trade in form of

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bundles. The same will be traded between the farmer and the trader, and trader to trader/manufacturer and so on.

As envisaged from the entries under GST, there are four different entries for tobacco, one under Schedule - I. liable @ 5% (CGST 2.5% and SGST 2.5%) and the remaining heads are in Schedule - IV liable for 28% (CGST - 14% and SGST 14%). And there is an entry of 'tobacco leaves under Reverse charge mechanism also as explained above.

The commodity "tobacco leaves" shall be interpreted in the light of the entry 109, the entry no 3 inserted under the notification issued for liability under reverse charge mechanism and the relevant HSN code mentioned against the description of the commodity i.e, 2401.

It is to note that though there are different entries with respect to tobacco, there is a specific entry in schedule I of Notification 1 / 2017 (CGST Rate) as **tobacco leaves**, and for the same the liability was brought under reverse charge mechanism. Hence it is clear that there is a distinction from the commodity 'tobacco leaves' with other entries.

From the respective GST tariff entries in the light of HSN codes mentioned against them It is observed that the two entries Sl.No 109, of Schedule I, 'tobacco leaves' and entry no 13 of IV schedule 'Unmanufactured Tobacco; tobacco refuse (other than tobacco leaves)' in the notification No 1/2017 (CGST Rate) Central Tax are only falling under the same HSN code 2401..

On detailed examination of the description of the commodity under the head 2401, 2401.10 : represents the commodities of 'Tobacco, not stemmed or stripped,' and 2410.20 represents the commodity 'Tobacco partly or wholly stemmed or stripped'. Further, the entries 2402, speaks about the finished product, and 2403 describes about the other products made out of tobacco. Hence the other two are not relevant for the present case. Therefore, a clear distinction shall be drawn between the 'tobacco leaves' and the unmanufactured tobacco'.

As observed from the facts, i.e process of tobacco, from the field to final product, the green leaves undergo curing process, and become eligible commercial commodity, for which the first transaction takes place in between the farmer and the trader on the auction platform. Further, as per the clarification issued by TRU 'tobacco leaves means, leaves of tobacco as such or broken tobacco leaves or tobacco leaves stems' also clearly express that the leaves as long as they do not loose their basic character as 'leaves' shall be considered as tobacco leaves only.

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In the present case the applicant purchases the dried leaves on auction platform, and trading. Getting the jobwork done for threshing and trading. In the light of the facts and legal position the ruling is given as under.

RULING

- i. What is the rate of GST applicable on tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves?

Ruling: The GST Rate of tax for the tobacco leaves procured at tobacco auction platforms or directly from farmers, which are cured and dried by farmers themselves is 5%.

- ii. If the applicant purchases tobacco leaves from other dealers who have purchased them from farmers, for the purpose of trading what will be the applicable rate of tax?

Ruling :

5% (2.5 % SGST + 2.5 % CGST) as per Sl. No 109 of Schedule I Notification No. 1/2017 (CGST) Central tax) Rate. Dt 28.6.2017

- iii. If the applicant segregates the tobacco into grades depending upon their size (width), colour/shade, length, texture of the leaf etc and sells such graded tobacco leaf what is the applicable rate of tax?

Ruling :

5% (2.5 % SGST + 2.5 % CGST) as per Sl. No 109 of Schedule I Notification No. 1/2017 (CGST) Central tax) Rate. Dt 28.6.2017

- iv. If the tobacco leaves are butted and sold to other dealers what will be the applicable rate of tax?

Ruling :

5% (2.5 % SGST + 2.5 % CGST) as per Sl. No 109 of Schedule I Notification No. 1/2017 (CGST) Central tax) Rate. Dt 28.6.2017

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- vi. If the applicant gets the tobacco leaves redried without getting them threshed what is the applicable rate of tax?

Ruling :

5% (2.5 % SGST + 2.5 % CGST) as per Sl. No 109 of Schedule I Notification No. 1/2017 (CGST) Central tax) Rate. Dt 28.6.2017

For the questions from S.No I to S.No VI...the relevant entry for rate of tax is...


Schedule	HSN	Product Description	Rate of GST
Schedule - I : Sl No 109	2401	Tobacco Leaves	CGST 2.5% i.e total GST % = 5%


- vii. If the applicant gets the tobacco threshed and redried on job work basis at GLT plants and then sells such threshed and redried tobacco leaves what is the applicable rate of tax?

Ruling :

28% (14 % SGST + 14 % CGST) as per Sl. No 13 of Schedule IV Notification No. 1/2017 (CGST) Central tax) Rate. Dt 28.6.2017

Schedule - IV; Sl NO; 13	2401	Unmanufactured Tobacco; tobacco refuse (other than tobacco leaves)	CGST 14 % i.e., total GST = 28%
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Sd/- (J.V.M SARMA)
Joint Commissioner (State Tax),
Authority for Advance Ruling,
Andhra Pradesh.


Sd/- (AMARESH KUMAR)
Joint Commissioner (Central Tax),
Authority for Advance Ruling,
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