

GST ADVANCE RULING CA. C. B. Thakar, CA. Jinal Maru	
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1. Case: M/s INDIAN METALS AND FERRO ALLOYS LTD [2023-3-TMI -622] (ODISHA AAR)

Facts of the Case:

1. The Applicant has got its manufacturing unit at Therubali and at Choudwar and captive mines located at Sukinda, Odisha
2. The Applicant has taken certain premises on rent at New Delhi and Odisha, as guest house. The said guest houses are used to provide food and accommodation for the employees of the company who visit New Delhi for official purpose and also for the employees who visit mining office at Jajpur, Odisha.
3. One of the apartments is taken on rent from a registered person, other is taken from unregistered person. In both the cases the houses taken on rent for guest house purpose are in the residential area and used by the Applicant Company for guest house of its employees.

Questions before AAAR:

1. Whether Service Received by a registered person by way of renting of residential premises used as guest house of the registered person is subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM)?

Arguments by Applicant

1. That the term "Residential Dwelling" is not defined anywhere in GST Act or in the earlier Service Tax regime. However, CBIC in its education guide dated 20.06.2012 has explained the phrase "residential dwelling" in clause 4.13.1 by interpreting the term in normal trade parlance as any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, houseboat, or like places meant for temporary stay.
2. That on normal course of business, they have taken a house on rent for use as its guest house. The service provider at New-Delhi used to charge GST on its invoice under FCM which is paid by the Applicant.
3. Further, vide Notification No. 04/2022- CTR dated 13th July,2022 amendment was made in Clause 12 of Notification 12/2017-CTR & the exemption for Service by way of renting of residential dwelling was restricted only to unregistered person.
4. The above said service provided to registered person was payable under RCM, vide Notification No. 05/2022 – CTR dated 13th July,2022 under serial no.5AA.

Decision of AAR

1. The Applicant is of the view that renting of residential dwelling to a registered person whether used for residential or for any other purpose will fall under RCM. However, they have contended that as the term guest house is not covered within the ambit of residential dwelling as provided in education guide. Also, their other vendor at New Delhi is charging GST on same service under FCM only.
2. Till 17th July 2022, services by way of renting of residential dwelling for use as residence was exempted, whereas services by way of renting for commercial use (SAC Code -997212) was taxable @ 18%.The decision to bring the renting of residential dwellings under the tax net was taken in the 47th GST Council Meeting held in June 2022 by partially removing the exemption and including the same under RCM services when provided to a registered person.
3. It is clear that GST will be applicable even if the residential property is rented out to a registered person w.e.f. 18th July 2022. Liability to pay GST @ 18% under the reverse charge mechanism will arise on the recipient (tenant), if he is a registered person under GST with no other condition.
4. Further, it may be noted that type or nature/purpose of use of residential dwelling i.e. for residence or otherwise (commercial) by the recipient, has not been a condition in the said RCM notification. Hence, service of renting of residential dwelling to a registered person, would attract RCM irrespective of the nature of use.

5. At the outset it is pertinent to understand whether in this case, the property on rent is a residential property or not and what shall be the GST implication if the same is being used as guest house by the Applicant.
6. From the written submission made, contentions advanced by the representatives of the Applicant company and rent agreement copies furnished, **the nature of rented properties under discussion clearly appear to be residential properties used for commercial purpose.**
7. Thus, it may be concluded that irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM as per Notification No. 05/2022 – CTR.

2. Case: M/s JCP AGRO PROCESS PVT LTD [2023-3-TMI-786] (GUJARAT AAR)

Facts of the Case:

1. The applicant is engaged in the activity of procuring raw tobacco from farmers and consequent sale of unmanufactured tobacco. **The whole leaf or the broken leaf** [formed during the course of bundling in gunny/jute bags – also known as ‘Bhukko’ in common trade parlance] **of the tobacco plant, are procured from the farmer/agriculturist by the applicant.** This is primarily used in bin manufacturing or chewing tobacco manufacturing.
2. The applicant sells some part of this goods/product, so procured from the farmer/agriculturist, on as it is basis, without any further process.
3. Further, they also carry out certain process on the whole leaf/broken leaf, so procured from the farmer/agriculturist , namely :
 - a. process of sorting & cleaning;
 - b. removing unwanted substances like small stones, earth particles, cleaning out any residual smaller sized stem pieces;
 - c. thereafter cutting and grading of leaves is done, which is popularly known as ‘unmanufactured raw tobacco leaves’;
4. The applicant thereafter undertakes the process of coating process primarily to retain the colour and flavour of the tobacco leaves for longer period of time.

Questions before AAR:

1. Whether for the purchase of raw tobacco from farmer [including naturally broken tobacco known as ‘tobacco leaves or tobacco bhukko’] is covered under reverse charge mechanism?
2. What would be the rate of tax in case of coating process is done on unmanufactured tobacco. If the applicant carried out the process of coating on the tobacco belonging to other registered person on job work basis?

Arguments by Applicant:

1. That coating is done to retain the characteristics of the unmanufactured raw tobacco leaf for a longer period of time. It helps in preserving the nicotine content & protects the leaf from getting destroyed by the bugs. It is not affected by natural moisture on account of the coating. Copies of test report carried out at NABL approved laboratory were submitted to substantiate his claim that there is hardly any variation in the characteristics of the product consequent to the coating process undertaken.
2. Post coating, the tobacco leaf cannot be consumed directly. It is thereafter only meant to be supplied to chewing tobacco manufacturers for manufacture of scented/zarda. The coating subsides taste of tobacco and enhances the taste of flavour and fragrances subsequently added to it by the manufacturer.
3. Even after carrying out the process of coating natural gum on the tobacco leaf, their product remains broken tobacco leaf and no new product emerges. The coated product would fall under HSN 2401 – Schedule I (Rate 5%).
4. The applicant further does not intend to sell/supply the natural gum coated unmanufactured broken tobacco leaves under any brand name & hence no cess would be applicable
5. The applicant has summarized his interpretation in reference to the facts of the case as under:

A.	Procurement of raw tobacco leaves in broken form [RCM applies when brought from farmers].	5%
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B.	Trading of procured raw tobacco leaves in leaf form/broken form as is received from the farmers.	5%
C.	Broken tobacco leaves given for processing including process of layering i.e. Coating on tobacco broken leaves to the registered person	12%
D.	Supply [sales] of coated tobacco broken leaves in gunny bag.	28%

Decision of AAR

1. That in terms of Notification No. 4/2017-Central Tax (Rate), in case of intra state supply of tobacco leaves, falling under 2401 by an agriculturist to a registered person, GST is to be paid under RCM by the recipient. Therefore, we agree with the applicant that in case of purchase of tobacco leaves/bhukko from the agriculturist, the applicant is liable to pay GST on RCM basis at 5% [2.5% CGST and 2.5% SGST] in terms of notification No. 1/2017-Central Tax (Rate), Sr. No. 109 of Schedule 1.
2. As a corollary, the applicant is liable to pay GST on forward charge basis at 5% subject to the condition that they are engaged in trading of tobacco leaves/bhukko, procured from agriculturist, on as such basis i.e. **without undertaking any further process on the same.**
3. As regards GST rate in case of sale/supply of coated tobacco broken leaves in gunny bag, a manual process of coating the leaves with natural edible gum is done to enhance the life of the leaves, to preserve the nicotine content and to ensure that it is not destroyed by bugs/insects. The applicants case is that this coating of natural gum does not amount to manufacture as defined under Section 2(72) of the CGST Act, 2017.
4. We find that manufacture is defined as processing of raw material/ inputs in any manner which results in emergence of a new product having a distinct name, character and use. The applicant has stated that this coated unmanufactured tobacco, is not fit for consumption even with lime tube since the tobacco has rough surface & does not provide a soothing experience when put in the mouth. Further, since the natural gum coated tobacco leaves subsides the nicotine it cannot be used for smoking; that these leaves are ideally used by Zarda manufacturers for making scented tobacco.
5. Though the applicant has undertaken the above process of coating, consequent to the cleaning process, removal of unwanted substances & thereafter cutting and grading of leaves procured from the agriculturist, in terms of the HSN notes, it still remains an unmanufactured tobacco, we hold that the product is classifiable under CTH 2401 as "unmanufactured raw tobacco leaves" & liable to GST at 28%.
6. However, the applicant has submitted that they propose to supply the said coated tobacco, to the customers in gunny bag without any brand name but with their name being put up on the gunny bags so as to identify the lot. If so be the case, we hold that the applicant would be liable to pay GST at 28% along with 71% Compensation Cess in terms of notification No. 1/2017-Compensation Cess (Rate). This is more so in view of the fact that in terms of the said notification "brand name" means brand name/trade name, whether registered or not, & includes a name/mark, symbol, monogram, label, signature or invented word or writing, used in relation to a specified goods for the purpose of indicating, a connection in the course of trade between such specified goods and some person using such name or mark, with or without any indication of the identity of that person.
7. We also agree with applicant's reliance place on the case of *Yogesh Associates [2006(199) ELT A221 (SC)]* wherein it was held that merely adding some substance does not result in the emergence of a new product and on the case of *Muthuvelappa Gounder & Sons [2010 (256) ELT 321 (Tri-Chennai)]* wherein the Hon'ble Tribunal held that curing the tobacco by treating the same with jaggery water, the product would continue to remain in HSN 2401.
8. Further, in respect of job work of coating done on the tobacco leaves by them in respect of tobacco leaves supplied by other registered persons CBEC vide its circular No.126/45/2019-GST has already clarified that entry at item (id) covers only job work services

as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. In terms of the said clarification we hold that the applicant is liable for payment of GST at the rate of 12 %.