

1. Case: M/s BANSAL INDUSTRIES [2023-5-TMI -1068] [PUNJAB AAAR]

Facts of the Case:

1. The Appellant is a partnership firm engaged in the business of ginning and pressing of cotton as well as crushing of oil seeds.
2. 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. The Kacha Arhtiya issues Form-J to the agriculturist and also transfers the amount to agriculturist after deducting its commission.
3. They 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 Act. The AAR held that them to be liable to pay GST under RCM in terms of notification 4/2017-CTR as amended by notification 43/2017-CTR and not the Kacha Arhtiya.
4. Hence the present appeal is filed.

Questions before AAAR:

1. 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 ?

Arguments by Appellant :

1. 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.
2. 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-CTR dated 14th November, 2017.
3. 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
4. That there is no separate invoice being raised by the Kacha Arhtiya or the farmer on them, but the bill of Kacha Arhtiya is itself an invoice. Further, the farmer is not present during the bidding process and Kacha Arhtiya sells the goods as per the prevailing market prices i.e. the farmer does not advice Kacha Arhtiya to sell the cotton below a particular price.

Decision of AAAR :

1. 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.
2. That vide entry 4A of the Notification 4/2017-CTR w.e.f.15th November,2017, purchase of raw cotton from agriculturist by any registered person was liable for GST under RCM. 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".
3. 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 goods or services or both supplied.

4. 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.

5. That the definition of recipient u/s 2(93) of the Act, 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.
6. As per section 2(94) 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.
7. 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.
8. 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.
9. As seen 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.
10. The said circular 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.
11. As detailed earlier, the definition of supplier of goods in section 2(105) of the CGST Act includes his agent and, therefore, Kacha Arhtiya becomes supplier of goods. If a view is taken that supplier of goods is only the agriculturist and not Kacha Arhtiya, 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.
12. 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.

13. 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 I. 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.
14. Kacha Arhtiya, 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.
15. 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.
16. 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-CTR. 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.